

# PROPOSALS TO REDUCE ILLEGAL IMMIGRATION AND CONTROL COSTS TO TAXPAYERS

## HEARING BEFORE THE COMMITTEE ON THE JUDICIARY UNITED STATES SENATE ONE HUNDRED FOURTH CONGRESS FIRST SESSION ON **S. 269**

A BILL TO AMEND THE IMMIGRATION AND NATIONALITY ACT TO INCREASE CONTROL OVER IMMIGRATION TO THE UNITED STATES BY INCREASING BORDER PATROL AND INVESTIGATOR PERSONNEL; IMPROVING THE VERIFICATION SYSTEM FOR EMPLOYER SANCTIONS; INCREASING PENALTIES FOR ALIEN SMUGGLING AND FOR DOCUMENT FRAUD; REFORMING ASYLUM, EXCLUSION, AND DEPORTATION LAW AND PROCEDURES; INSTITUTING A LAND BORDER USER FEE; AND TO REDUCE USE OF WELFARE BY ALIENS

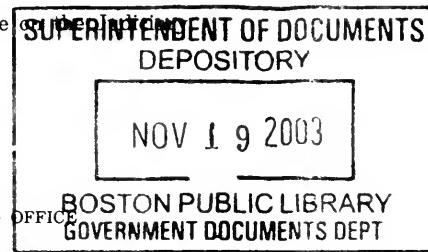
MARCH 14, 1995

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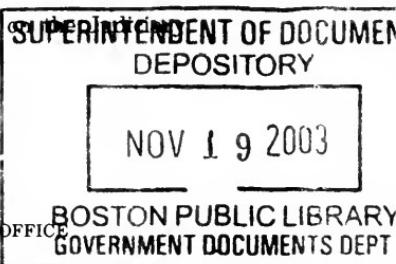
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# CONTENTS

## STATEMENTS OF COMMITTEE MEMBERS

	Page
Kyl, Hon. Jon, a U.S. Senator from the State of Arizona .....	1
Feinstein, Hon. Dianne, a U.S. Senator from the State of California .....	3
Thurmond, Hon. Strom, a U.S. Senator from the State of South Carolina .....	13
Simpson, Hon. Alan K., a U.S. Senator from the State of Wyoming .....	13

## CHRONOLOGICAL LIST OF WITNESSES

Hutchison, Hon. Kay Bailey, a U.S. Senator from the State of Texas .....	6
Bryan, Hon. Richard, a U.S. Senator from the State of Nevada .....	8
Reno, Hon. Janet, Attorney General, U.S. Department of Justice, accompanied by Doris Meissner, Commissioner, Immigration and Naturalization Service .	18
Chiles, Hon. Lawton, Governor, State of Florida .....	46
Panel consisting of Hon. Doris Meissner, Commissioner, Immigration and Naturalization Service; Hon. Shirley S. Chater, Commissioner, Social Secu- rity Administration; and Susan Martin, Executive Director, U.S. Commis- sion on Immigration Reform .....	59
Panel consisting of Michael Fix, principal research associate, and director, Immigrant Policy Program, Urban Institute; Lawrence H. Fuchs, professor of American Civilization and Politics, Brandeis University; Charles B. Keely, professor of International Migration, Georgetown University; and Mark J. Miller, University of Delaware .....	91
Panel consisting of Elizabeth G. Ferris, vice chair, Committee on Migration and Refugee Affairs, InterAction; Elisa C. Massimino, legal director, Wash- ington office, Lawyers Committee for Human Rights; Gregory T. Nojeim, legislative counsel, Washington national office, American Civil Liberties Union; David Simcox, senior advisor, Negative Population Growth, Inc.; Dan Stein, executive director, Federation for American Immigration Re- form; and Cecilia Muñoz, deputy vice president, National Council of La Raza .....	125

## ALPHABETICAL LIST AND MATERIALS SUBMITTED

Bryan, Hon. Richard:	
Statement .....	8
Letter from the U.S. Department of Housing and Urban Development .....	11
Chater, Shirey S.:	
Statement .....	66
Prepared statement .....	68
Chiles, Hon. Lawton:	
Statement .....	46
Prepared statement .....	50
Feinstein, Hon. Dianne: Statement .....	3
Ferris, Elizabeth G.:	
Statement .....	125
Prepared statement .....	127
Fix, Michael:	
Statement .....	91
Prepared statement .....	93
Fuchs, Lawrence H.:	
Statement .....	97
Prepared statement .....	99
Hutchison, Hon. Kay Bailey: Statement .....	6

	Page
Keely, Charles B.:	
Statement .....	103
Prepared statement .....	105
Kyl, Hon. Jon: Statement .....	1
Martin, Susan:	
Statement .....	74
Prepared statement .....	76
Massimino, Elisa C.:	
Statement .....	132
Prepared statement .....	134
Meissner, Doris:	
Statement .....	59
Prepared statement .....	60
Letter to:	
Ray Ortega, U.S. Border Patrol .....	65
Congressman Brian Bilbray .....	65
Commissioner Doris Meissner .....	65
Miller, Mark J.:	
Statement .....	107
Prepared statement .....	109
Muñoz, Cecilia:	
Statement .....	176
Prepared statement .....	179
Nojeim, Gregory T.:	
Statement .....	140
Prepared statement .....	141
Reno, Hon. Janet:	
Statement .....	18
Prepared statement .....	41
Simcox, David:	
Statement .....	147
Prepared statement .....	149
Simpson, Hon. Alan K.:	
Statement .....	13
Prepared statement .....	16
Stein, Dan:	
Statement .....	155
Prepared statement .....	157
Thurmond, Hon. Strom: Statement .....	13

## APPENDIX

### QUESTIONS AND ANSWERS

Responses of Attorney General Reno to questions submitted by:	
Senator Simpson .....	199
Senator Leahy .....	202
Senator Thurmond .....	209
Responses of Commissioner Meissner to questions submitted by Senator Leahy .....	211
Responses of Shirley S. Chater to questions submitted by Senator Thurmond ..	272
Responses of Susan Martin to questions submitted by:	
Senator Simpson .....	273
Senator Thurmond .....	274
Responses of Michael Fix and Wendy Zimmermann to questions submitted by:	
Senator Simpson .....	277
Senator Thurmond .....	278
Responses of Lawrence H. Fuchs to questions submitted by:	
Senator Simpson .....	280
Senator Thurmond .....	280
Responses of David Simcox to questions submitted by:	
Senator Simpson .....	281
Senator Thurmond .....	281
Responses of Dan Stein to questions submitted by:	
Senator Simpson .....	282
Senator Thurmond .....	285

**Responses of Cecilia Muñoz to questions submitted by:**

Senator Simpson .....	286
Senator Thurmond .....	287

**ADDITIONAL SUBMISSIONS FOR THE RECORD**

Letter to Senator Alan K. Simpson from the American Civil Liberties Union ..	289
--	-----

**Prepared statement of the:**

Agricultural Producers .....	289
------------------------------	-----

Americans for Immigration Control .....	292
---	-----

Letter to Hon. Alan K. Simpson and Hon. Elton Gallegly from George W.
---

Bush, Governor of Texas .....	294
-------------------------------	-----

**Prepared statement of the:**

Eastern Border Transportation Coalition .....	296
---	-----

Episcopal Migration Ministries .....	297
--------------------------------------	-----

Hebrew Immigrant Aid Society .....	298
------------------------------------	-----

Immigration and Refugee Services of America .....	300
---	-----

National Asian Pacific American Legal Consortium .....	303
--	-----

San Diego County Board of Supervisors .....	305
---	-----



# **PROPOSALS TO REDUCE ILLEGAL IMMIGRATION AND CONTROL COSTS TO TAXPAYERS**

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**TUESDAY, MARCH 14, 1995**

**U.S. SENATE,  
COMMITTEE ON THE JUDICIARY,  
Washington, DC.**

The committee met, pursuant to notice, at 9:24 a.m., in room SD-226, Dirksen Senate Office Building (Hon. Alan K. Simpson) presiding.

Present: Senators Thurmond, Grassley, Kyl, DeWine, Leahy, Simon, Feinstein, and Feingold.

Senator SIMPSON. My deepest apologies. I will save my remarks. Jon Kyl, go right ahead.

Senator KYL. Well, thank you, Mr. Chairman.

Senator SIMPSON. I have been on the road for an hour; it has been miserable.

Senator KYL. Well, you catch your breath and we will go ahead.

Senator SIMPSON. OK.

## **STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM THE STATE OF ARIZONA**

Senator KYL. Thank you very much, Mr. Chairman and members of the committee. I thank you for the opportunity to briefly speak before the committee this morning, and then I will, of course, join you and look forward to working with Senator Simpson and other members of the Judiciary Committee to attempt to halt illegal immigration in our country. Specifically, I know the committee will work on a comprehensive legislative strategy, including reform of repatriation, deportation, and other laws to stop illegal immigration and to control costs to our Nation's taxpayers.

Mr. Chairman, like other States, Arizona has been significantly affected by increasing numbers of illegal aliens crossing its border. Arizona's border concerns, however, are not always given the national attention that other larger States receive. I am grateful for the opportunity to very briefly highlight the illegal immigration situation in Arizona.

Since 1993, Arizona's Tucson sector Border Patrol has experienced a dramatic increase in illegal alien apprehensions. When such increases occur, the entire State is affected. The Immigration and Naturalization Service, for example, reports that illegal aliens may comprise up to 10 percent of the work force in Arizona, even though employers in the State are not intentionally violating the law.

The rise in illegal immigration into Arizona should not come as a surprise. Until very recently, the State had not been given the resources it needs to effectively stop the flow of illegal aliens crossing its borders. For example, as illegal immigrant apprehension rates increased 30 percent in the Tucson sector in 1993, the Tucson sector Border Patrol received a 30-percent decrease in the number of agents for 1994.

While the Justice Department directed funds into both the Operation Hold the Line Program in El Paso, TX, and Operation Gatekeeper in California in 1994, Arizona was effectively excluded from the Department's overall immigration enforcement plan. As a result of Hold the Line and Operation Gatekeeper, the number of illegal apprehensions decreased 72 percent in El Paso and 15 percent in San Diego by the end of 1994, both very effective and promising programs, and it should have been no surprise that those illegal immigrants then would begin funneling through Arizona, precisely what occurred.

The Tucson sector experienced a 51-percent increase in illegal apprehensions by the end of 1994, and reports show that for the month of February of this year, the Tucson sector Border Patrol arrested just under 25,000 illegal aliens, breaking its 1-month record of 19,400 apprehensions set just the month before.

These are more than 100-percent increases from the same months just a year ago. As a matter of fact, in the Nogales International of March 10th, just a few days ago, a headline, "Agents Apprehend 4,019 in First Eight Days of the Month," the story says the Border Patrol arrested 4,019 illegal aliens during the first 8 days of the month, only 200 shy of the total for all of March 1994.

Over the past year, I have worked to ensure that Arizona receives adequate Border Patrol and other resources to fight illegal immigration, communicating with Attorney General Janet Reno several times. Arizona was allocated 100 out of 700 new agent positions for fiscal year 1995. Those agents, however, had to be recruited and they still must complete their training.

When Arizona broke its record for 1-month apprehensions in January, Senator McCain and I wrote to the Attorney General and urged her to immediately reassign agents to the Tucson sector of the Border Patrol, and on February 5, at the direction of the President, 62 new agent positions were temporarily assigned to Nogales, AZ, and the results have been very encouraging.

The Nogales Police Department, for example, reports that calls requiring police assistance are now at lower levels than they were 10 years ago, and Attorney General Reno has agreed to keep in place the temporary agents assigned to Arizona until at least half of the 100 new agents arrive in Arizona on April 22.

In addition, it is critically important that Border Patrol sectors throughout the Nation, including Arizona, utilize cameras, sensors, fences, and lighting to support border security. My trips to Arizona's border sectors have convinced me that equipment and technology, including cameras and sensors and fingerprinting systems, effectively complement increased Border Patrol manpower in the overall effort to secure U.S. borders.

I will certainly continue to work with the Justice Department to develop and implement immigration policies that recognize the need

for the entire Southwest border to prevent the flow of illegal immigration into our country. Border Patrol and other Immigration and Naturalization resources do make a difference, but only when resources are allocated so that the entire border region is able to hold the line on illegal immigration.

Of course, Mr. Chairman, we must also continue to work toward policies that recognize the importance of temporary and legal entrance of both Mexican and Canadian citizens into our communities. Many of our border community businesses depend on these legal entrants.

Mr. Chairman, in conclusion, illegal immigration is one of the most important issues facing our Nation today, and I think we need to send a clear message to the American people that we are committed to enforcing the law. I look forward to hearing the testimony of my colleagues from Texas, California, and Nevada, and, of course, of the Attorney General and the rest of the witnesses today on this important subject of illegal immigration.

Thank you.

Senator SIMPSON. Senator Kyl, thank you. In the committee instead of going by seniority, we go majority, minority, and so forth. I want to welcome Senator Feinstein and Senator Kyl to the Subcommittee on Immigration. You will be great allies in the cause of doing something that is appropriate.

Now, Senator Feinstein, please.

#### **STATEMENT OF HON. DIANNE FEINSTEIN, A U.S. SENATOR FROM THE STATE OF CALIFORNIA**

Senator FEINSTEIN. Thank you very much, Mr. Chairman, and I want to thank you for holding these hearings and for your commitment to push forward.

I view this issue as the No. 1 priority for California and for this Congress, and I am very hopeful that we will be able to put together a bill—I am delighted to join you on the subcommittee, as you know—put together a bill and move it just as rapidly as we can.

California is on a tier by itself with respect to immigration, both legal immigration and illegal immigration. I have come to the conclusion that the only way to protect legal immigration in this country is to stop, and I mean the word “stop,” illegal immigration. Unfortunately, up to very recently, very little has been done to really move strongly in that direction.

In the last 2 years, we have appropriated about \$100 million to increase Border Patrol and to increase the tenacity and strength of our borders. It still isn’t enough. California, as you know, has passed proposition 187, a proposition that essentially says that if anybody suspects, any teacher suspects that a youngster is in school and is an illegal immigrant, that teacher must report that youngster to the Immigration and Naturalization Service. Not only that, but if the teacher believes the youngster is there legally but the parents may be illegal immigrants, that teacher must report that family to INS.

I did not support 187. I opposed 187, but when I opposed it, I opposed it with the belief that this Congress must take up its re-

sponsibility and properly strengthen laws to militate against illegal immigration. Now, how can we do that?

I am in the process, and hope to work with you, Mr. Chairman, and other members of this committee, of putting together my bill which is aimed at stemming some of the loopholes in existing law, and I would like to say exactly what it would do.

It would permit the hiring of up to 1,000 more Border Patrol agents a year for the next 3 years. That would be a minimum of 700 agents and a maximum of 300 support personnel per year. It would authorize the provision of border equipment and infrastructure necessary to stop illegal immigration. That is north-south and it is east-west because, as you know, 50 percent of the illegal immigrants a year come in through visa overstays, so we have got to get serious about enforcing our visa requirements.

It would fully staff land border crossings at peak periods to expedite legal travel across borders. It would speed up deportation for those who have committed misdemeanors and aggravated felonies, and it would broaden the list of crimes that Federal law says are aggravated felonies.

It would insist on negotiation of mandatory prisoner transfer treaties to require illegal immigrants convicted of crimes to serve their sentences in their home countries. It would allow States to refuse welfare benefits, such as Medicaid and any form of cash or other welfare assistance, to illegal immigrants. It would increase the civil penalties for hiring, recruiting, or referring illegal immigrants for employment. Penalties currently range from \$250 to \$10,000. Under this, penalties would range from \$1,000 to \$20,000, so that there is a serious civil penalty if you hire illegal immigrants, if you recruit them, or if you refer them.

It would deny the earned income tax credit to persons in the United States illegally. It would dramatically increase the penalties for alien smuggling. I am sorry to report that the U.S. attorney in San Diego advises me that even with a prior, someone who smuggles illegals will do maybe 6 months. That simply is not adequate and we must change it, so this bill would rather dramatically heighten penalties for illegal smuggling. As we tighten our borders, illegal smuggling is going to increase and the deterrence to that is a strong penalty and strong Federal prosecution for violation.

We would broaden asset seizure authority to include those who make false immigration documents. The business of producing immigration documents is a big business in southern California. You can go on Alvarado Street anywhere along a square-block park and buy a driver's license, a green card, a Social Security card for anywhere from \$10 to \$100 and have it delivered within the hour.

The chairman has his own illegal documents, but for other members of the committee, these reproductions or these forgeries are very good. This is what is called a rosita card, which is the new green card. One is a forgery and one is the real thing. If you have them both in front of you, you can't tell the difference. How could an employer tell the difference? And there are these for Social Security cards, for drivers' licenses, for every form of identification.

Presently, there are over 20 identification documents. They are going to be lowered to 16 and then to 6, I understand. It is my belief that even at six, that is too many because you cannot expect

an employer to be that sophisticated in being able to look at a laminated, carefully forged card and know that it is a forgery.

So I am one that believes that not only do we have to double the penalty for document fraud and stop it from happening, but we also have to reduce the number of documents and create a system—computer, if possible, and I don't believe we can wait 5 years to put it in play, but a limited number of counterfeit-proof identity documents that qualify someone here for work. You don't have to carry them all the time, but when you go in for a job and somebody says, can you demonstrate you are legally entitled to work in this country, there are a few documents that you can produce that are counterfeit-proof that are verifiable by the employer that say, yes, I am legally entitled to work in this country. We would increase the maximum criminal penalty for facilitating or aiding someone in falsely obtaining an immigration document to \$25,000.

Now, we would also fund this because if we are going to enforce our borders, other than talk about it, we must have adequate personnel, we must have on-the-line deterrence, we must be able to prevent illegal immigration, and that means we have got to produce the dollars to do it.

In the last 2 years, we have provided \$100 million. Is it enough? No. How, in an era of diminishing budgets, do we fund what we need to do? I believe we fund it the same way we run many bridges in this country; we have a crossing fee. If you use the bridge and the infrastructure provided and the personnel, you pay a fee. I would propose a \$1 border crossing fee. That would produce in excess of \$400 million a year necessary to fund the necessary manpower, as well as the necessary Customs and other personnel.

Let me speak about another thing that is happening because of lax borders, and that is the increase of cocaine into this country. Last week, I met with the head of DEA. What he told me was that DEA knows of at least 40 727-size planes controlled by the Cali drug cartel out of Colombia used to smuggle cocaine into this country. Most of these planes are off-loaded in northern Mexico and drugs are moved through the California border.

I will be talking more at a later time about a line release program which I believe is a terrible mistake of this Government to facilitate large container trucks into the country with no checking, but let me tell you what DEA also told me. Ninety percent of the methamphetamine labs in this country are located in southern California and 90 percent of them are run by illegal immigrants. We must do something about this.

Let me just end by speaking about the impact of illegal immigration on the State of California. Forty-five percent of the Nation's illegal immigrants are now today in California. That means between 1.6 and 2.3 million illegal immigrants reside in 1 State alone. Fifteen percent, or 19,200, of California's State prison population—the total population is 126,296. Fifteen percent of illegal immigrants are in State prison in California today.

Forty-five percent, or 150,000, of all pending asylum applications come from California. Thirty-five percent, or 40,000, of the 113,000 refugees to this country claim residency today in California, and 29 percent, or 260,000, of the 904,000 legal immigrants to this country a year choose to live in California. That is a 1993 figure. In eco-

nomic terms, the cost to the State is \$3.6 billion. The cost of federally mandated education, health care, and incarceration is \$2.66 billion to California alone.

As a Senator from California, this body cannot afford inaction. We cannot afford to leave our borders as a sieve and not to take the action that is required to stop illegal immigration, and I believe I have pointed out today 13 specific points which would toughen laws, tighten borders, deny welfare benefits, and create a deterrence for illegal immigration.

In summary, Mr. Chairman, I believe the time for action is now, and I thank you very much.

Senator SIMPSON. Thank you very, very much.

Now, my colleague from Texas, Kay Bailey Hutchison, and I know of your tremendous interest here and it is going to be great having all four of you in this cause as we proceed in a bipartisan way.

**STATEMENT OF HON. KAY BAILEY HUTCHISON, A U.S.  
SENATOR FROM THE STATE OF TEXAS**

Senator HUTCHISON. Thank you, Mr. Chairman, and thank you for agreeing to let us go forward after you were unable to make it quickly. That was very thoughtful of you.

Senator SIMPSON. I didn't have any choice. I know what you would have done to me later. [Laughter.]

Senator HUTCHISON. I appreciate the fact that there is such a good attendance at this hearing. I think that shows that the Congress is getting ready to do something dramatic in the area of curbing illegal immigration, and I think the time has come.

The story of our Nation's founding and its growth is one of a long history of immigration, but immigration has not been constant. There have been long periods of immigration in our history, followed by long periods of little or no immigration. Scholars in the field of immigration generally refer to the periods of immigration as waves. The fourth wave of immigration has been underway for nearly three decades now.

There is one dramatic difference, however, between previous periods and the current fourth wave. The difference is the change in immigration laws in 1965 that presaged the current wave of immigration, coinciding with the policy of increasing welfare benefits in our country. This has resulted in migration pressures that far exceed our capacity for legal entrants. We have witnessed the destructive impact of the welfare state on our own citizenry and it has been a magnet for others to come and illegally stay in our country.

While there is consensus in both political parties that we must have welfare reform, we must also address the problem in a bipartisan way of illegal immigration and it must go to the front burner. Last year, I introduced S. 2105, the Illegal Immigration Control Act of 1994. I will soon introduce an updated version of the bill, with important new features.

The major components of my legislation fall into four categories: deterrence and interdiction, apprehension and repatriation, denial of Government benefits, and enhancements to Social Security card verification procedures.

Since more than 90 percent of the illegal immigrants who enter our country do so via land routes, of course, we must concentrate our efforts at the borders. That is why I place increased emphasis on deterrence and interdiction. The legislation I propose would make increased use of physical barriers at all high-traffic areas. This has met with some success in California, and I would suggest that the subcommittee review the report on border control prepared by the Sandia National Laboratory in New Mexico. It is clear that physical barriers can help reduce illegal border crossings. Physical barriers alone, however, are not enough. Therefore, I recommend an increase of 6,000 Border Patrol agents to complement those now patrolling our borders. Putting manpower on the borders works very well.

Mr. Chairman, I also invite you and encourage you to have Silvestre Reyes, of El Paso, appear before your subcommittee. My friend, the Senator from Arizona, mentioned how well Operation Hold the Line has worked. He is the INS sector chief for El Paso that is running that most successful border interdiction operation.

When the House Judiciary Subcommittee on Immigration requested him to appear, the administration at first refused the request, but after intervention from Representative John Bryant, the administration allowed him to appear, but only to answer questions. Unfortunately, he was not allowed to present the full story of Operation Hold the Line. It is a compelling story and I think this committee would do well to hear it.

While these measures may sound expensive, they are not nearly so expensive as doing nothing. The net cost of illegal immigrants to the United States was in excess of \$19 billion in 1993. If nothing is done, the net costs of illegal immigrants are expected to total more than \$270 billion for the period of 1994 through 2003. We owe it to U.S. taxpayers to cut those costs.

To back up deterrence and interdiction effects, we must rely on enhanced apprehension and repatriation procedures as the second level of defense. Once apprehended, I am proposing that all illegal aliens be fingerprinted. The fingerprint data base would be available to law enforcement, INS, Labor Department, and State Department officials. Anyone apprehended as an illegal entrant would be permanently barred from future permanent legal residence in this country, with the single exception, of course, that the individual meet legitimate refugee or asylee status.

The fingerprinting method I am proposing is an electronic scanning procedure that is currently being tested in some States to reduce fraudulent welfare claims. In addition to apprehending criminal aliens, it will allow the United States to track repeat border crossers. For those apprehended crossing the border multiple times, repatriation will be to the interior of the country rather than simple cross-border repatriation.

The third major element I am proposing is termination of public benefits to individuals who are not permanent residents, refugees, asylees, or parolees. The exception I recommend to this, of course, is emergency medical care. Also, the IRS would be directed to take steps to ensure that non-U.S. citizens did not receive money through earned income tax credits, much as Senator Feinstein has just outlined.

The fourth component is enhancements in Social Security card verification procedures. The single most important element of workplace verification is a tamper-resistant Social Security numbering system. To that end, I am recommending a national birth and death registry, coordinated with State agencies, the Social Security Administration, and INS.

Given the complexity of this task, my bill will initially require that the 10 States most heavily impacted by illegal immigration be the test bed for establishment of the National Birth and Death Registry. The goal is the establishment of an electronic network linking the vital statistics records of the States with the Federal Government for the purpose of matching deaths with births, and to provide the ability to confirm births and deaths within those States. This should substantially reduce the fraudulent acquisition of Social Security numbers. A new tamper-resistant Social Security card would also be required of all new job applicants not later than January 1, 1998.

This, of course, seems like a daunting task, but the current state of computer technology is such that myriad data bases can be interfaced. We must do our part to ensure that the information that goes into a data base is as free from fraud as possible. We can ease the burden on employers and make the U.S. workplace more secure from fraud if we simply use the tools technology has provided us.

This also is not like a national registration card which is so offensive to the legal residents and citizens of our country. I think we can go a long way toward tightening up our Social Security system by doing these things that do not infringe on people's rights and dignity.

Mr. Chairman, you have a long day and I would like to summarize my views on reducing illegal immigration and the negative impacts it has on U.S. taxpayers; first, making every effort we can to deter and interdict illegal aliens at our borders. Second, where deterrence and interdiction fails, we should expand our efforts at apprehension and repatriation. Third, we should cut off Government benefits to those who gain entry illegally. And, last, we must take all steps necessary to reduce fraudulent entry into the U.S. workplace, while at the same time reducing the burden on employers.

Mr. Chairman, I want to particularly compliment your staff for the assistance that they have provided to us throughout this process. They have been wonderful to work with, and I appreciate the time and interest of your members.

Senator SIMPSON. Thank you so much. I appreciate that, and I look forward, as I say, to working with you.

Now, my friend from Nevada, Senator Bryan, please. It is good to have you. You have been watching closely for years. I have observed that.

#### **STATEMENT OF HON. RICHARD BRYAN, A U.S. SENATOR FROM THE STATE OF NEVADA**

Senator BRYAN. Thank you very much, Mr. Chairman. Let me join my colleagues who are testifying here this morning in commending you for holding this hearing and your leadership, and let me preface my comments by saying also that I appreciated the opportunity in the last Congress to work with you on a number of im-

portant immigration amendments that provided expanded resources for Border Patrol, expedited deportation proceedings for failed criminal aliens, as well as asylum applicants. I look forward to working with you in a bipartisan manner on developing a comprehensive piece of legislation this year that deals with the issue of immigration reform.

Let me make an observation at the outset that I am troubled and somewhat offended by the mindset of some groups who suggest that those of us who are calling for reform of our immigration system are somehow racist or xenophobic. Curbing the flow of illegal immigration is a legitimate policy that demands the immediate attention of the Federal Government.

I was pleased to see that in your recent legislation, your bill incorporates many of the recommendations of the first report to the Congress of the Commission on Immigration Reform. I believe that Barbara Jordan and the other members of the Commission have done a fine job in evaluating U.S. immigration policy and in making a number of thoughtful recommendations to us to reduce unlawful immigration.

I have also been encouraged by the interest that the Clinton administration has shown in the area of immigration reform and by the support of the Attorney General and the Commissioner of the Immigration and Naturalization Service. I am sure that all of us would agree that there is clearly much to be done.

Recently, there has been a tremendous amount of public attention focused on the costs and other related problems associated with illegal immigration. Whether it is the strain that is placed upon local communities as a result of the fraudulent attainment of benefits by illegal immigrants or State efforts to require the Federal Government to reimburse them for expenses associated with immigration enforcement, rarely a day goes by that we do not read or hear of an incident caused by our failed and broken immigration system and our lack of adequate control over our borders.

Your bill, Mr. Chairman, and the Commission's report recognize the principal reason people come to this country unlawfully. They are in search of economic opportunity. Building on the Commission's report, your bill develops a new system of verification to ascertain whether individuals are legally eligible to be employed in the United States. I think that is central to the discussion that we have this morning on illegal immigration, and central to any piece of legislation that deals effectively with the tide of illegal immigration that is flooding the country.

I am not unmindful, and I understand the concerns that many people have with the concept of establishing a national computerized registry of authorized workers or a document that verifies worker eligibility. But as my colleague, Senator Feinstein, pointed out this morning and others have commented on, it is virtually impossible for employers to ascertain under the present system whether or not an individual is, in fact, legally eligible to secure employment in the United States.

The demonstration projects provided by this legislation, in my view, provide adequate safeguards and sufficient flexibility to the States so that individual civil liberties will be protected. Quite sim-

ply, we need a better worker verification system, and we need it now.

The need to develop this credible verification system also has profound implications for Federal and State public assistance programs. The disconnect between our policy objectives and the reality of what is occurring out there are no more apparent than in the failure to deny public housing benefits to illegal aliens.

In 1980, the Congress of the United States enacted legislation which prohibited illegal immigrants from occupying public housing. That was 15 years ago. Fifteen years later, that legislative enactment is not being enforced. The ostensible reason given is that the legislation is not itself self-executing, and that it requires implementation through the adoption of a regulation.

I had occasion in December of this past year to visit with one of the housing authorities in my own State. I discovered that, by their own accounts, more than 10 percent of those occupying public housing in the city of Reno are illegal immigrants. I suspect that those numbers are reflected in other communities, although I do not make the representation this morning, Mr. Chairman and members of the committee, but I suspect our situation is not unique, and that the housing authority is precluded from ascertaining whether or not the individuals who are there are, in fact, illegal immigrants.

At the same time, we have a backlog in one small community of Reno of more than 500 families, American citizens who are here legally, who pay their taxes, and who are precluded from gaining access to public housing by reason of illegal immigrants who are occupying it.

Following up on this, I had a meeting with HUD, and I will share a couple of thoughts and observations with this committee. First, I am informed that this regulation, this final rule, which has had a gestation period of 15 years through Republican and Democratic administrations alike, is about to be finalized, and we will have word on that shortly, so I am told, and it will go into effect within 90 days.

Second, in terms of trying to deal with the issue of a policy and a law that says it is illegal to have illegal immigrants in public housing, you cannot verify that, and I have been advised by HUD—and I share a copy of the correspondence that I have from HUD and ask, Mr. Chairman, that it be made a part of the record—that public housing administrators, as part of a comprehensive effort to determine eligibility for public housing, which, as you know, Mr. Chairman, and members of this committee know, involves many other factors, can also now require some identification and proof that individuals who are making application are indeed lawful residents of the United States, so long as that is part of a comprehensive inquiry that every applicant must subject himself or herself to.

SENATOR SIMPSON. That document will be accepted into the record, and I thank you.

SENATOR BRYAN. I appreciate that, Mr. Chairman.  
[The letter referred to follows:]

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,  
*Washington, DC.*

Hon. RICHARD H. BRYAN,  
*U.S. Senate, Washington, DC.*

DEAR SENATOR BRYAN: On behalf of Secretary Cisneros, thank you for your letter of February 9, 1995, in which you requested clarification of two issues concerning the Department's implementation of Section 214 of the Housing and Community Development Act of 1980, as amended (Section 214). As you note in your letter, Section 214 prohibits the Secretary of HUD from providing financial assistance under certain HUD programs to persons other than United States citizens, nationals, or certain categories of eligible noncitizens.

First, you request clarification concerning the effective date of the final rule. The final rule has been approved by the Office of Management and Budget (OMB) and will be published shortly. The rule provides that it will take effect 90 days from the date of publication in the Federal Register. The Department believes that 90 days is a reasonable and necessary period of time to allow housing authorities and project owners to become proficient in using the SAVE system, and otherwise develop procedures to insure proper implementation of Section 214.

You ask whether during this period the Immigration and Naturalization Service (INS) could begin checking the names of tenants and applicants on the SAVE system until such time as project owners and housing authorities are trained to use SAVE. HUD does not expect that either the INS nor the housing authorities and project owners would have the resources to commence verification procedures immediately following publication of the rule. For accurate verification to occur, housing authorities and project owners would have to compile more information for the INS than the names of applicants and current tenants. To determine whether an individual has appropriate immigration status, the housing authority or project owner must request immigration documentation from the individual. Moreover, it is HUD's position that the housing provider may not exclude an applicant based on immigrant status until the rule is effective. However, the Department believes that publication and notice of the final rule in and of itself will act as a significant deterrence to illegal immigrants from applying for assistance in HUD public housing or other HUD assisted housing.

Second, you advise that housing authorities and project owners believe that they can greatly reduce the number of persons falsely claiming to be citizens if they can require the submission of documents such as birth certificates and passports from all persons applying for entry into public housing. You ask whether the final rule will provide for submission of these types of documents from everyone.

The final rule will not require submission of these types of documents from all tenants and applicants because Section 214, as amended by the Congress in 1986, does not require the submission of these documents. Section 214 specifically provides for the submission of a declaration, signed under penalty of perjury, by which the applicant or tenant states whether he or she is a citizen or national of the United States, or if not a citizen or national, whether the applicant or tenant is in satisfactory immigration status. Those individuals advising that they are immigrants, must submit to the housing authority or project owner their immigrant registration documentation or other proof of immigrant registration with the INS for purposes of verification of immigration status with the INS.

However, as Deputy General Counsel Julian advised you, many housing authorities currently ask for extensive identification and documentation as part of the application process, including birth certifications and evidence of employment. The rule does not prohibit housing authorities from requesting documents of identification and verification that they believe are appropriate and necessary to determining eligibility as long as the housing provider does not discriminate in making such requests.

During the next 90 days, the Department will work closely with housing authorities and project owners to ensure that they are becoming trained with use of the SAVE system, and are ready to proceed with implementation of Section 214 when the rule takes effect.

Thank you for your interest in the Department's programs.

Sincerely,

WILLIAM J. GILMARTIN,  
Assistant Secretary.

Senator BRYAN. There have been varying estimates shared with this committee this morning, Mr. Chairman, as to the cost of illegal immigration. Whether it is \$4 billion or \$19 billion or \$100 billion,

it is simply indefensible as a matter of public policy to provide scarce public resources to illegal immigrants when indeed this Congress is making some very, very tough decisions in terms of limiting public funding to those in our society who are most in need and who are themselves lawful residents of this country.

Now, there are a number of other issues—in the interests of time, I will simply abbreviate them—that require our attention. Some have been commented on by my colleagues who join me this morning, but clearly the work authorization situation as it deals with asylum applicants—I am troubled by the implementation of the amendment that we worked on last year, Mr. Chairman, that indicates that that goes into effect only for 180 days. I think that we need to look at that. Expedited deportation proceedings for criminal aliens, increased penalties for alien smuggling—those and other issues are dealt with by your committee and have been commented on extensively this morning.

Let me just conclude, Mr. Chairman, by saying that I look forward to working with you in a bipartisan fashion to deal with this issue and to enact in this Congress comprehensive legislation dealing with illegal immigration. While this Congress is engaged in a great debate as to the role of government, what services are to be performed by the Federal Government, what services are to be performed by State and local government, and what services should be performed generally, I think all would agree that the subject of immigration is a policy in terms of its overall impact that is appropriately vested in the Federal Government—in some respects, exclusively vested in the Federal Government.

We must act now, Mr. Chairman, and I pledge to you my working with you and others who are interested in this issue to develop this legislation.

Senator SIMPSON. I deeply thank all four of you and pledge to you that we will do sensible, credible legislation, and we will do it this year. We will get it out of conference and we will put it before the President. This is a pledge. I know all of you will help me do that. So thank you very much, and I do apologize for my lateness.

Well, now we have our next panel, consisting first of our Attorney General, the Honorable Janet Reno. It is a great privilege to have you here again. You are a remarkable resource to us. You assured me at our first meeting many months ago that immigration reform would be a priority for you. I believe you have demonstrated that it is indeed a priority. This is evidenced by the resources you have devoted to the INS, and most importantly by your personal attention and your personal involvement in the INS and your work with me and members of the committee. You have my deep admiration and personal respect. You know that. I always enjoy working with you on so many things that we have done in these times.

Let me ask you, your schedule is such that you can be with us until approximately 11:00. Is that so?

Attorney General RENO. I can be as flexible as you want. I am supposed to go to the Judicial Conference, but they know you come first.

Senator SIMPSON. Well, that was very well done. [Laughter.]

Senator THURMOND. Mr. Chairman.

Senator SIMPSON. Senator Thurmond.

**STATEMENT OF HON. STROM THURMOND, A U.S. SENATOR  
FROM THE STATE OF SOUTH CAROLINA**

Senator THURMOND. I am going to have to leave for another engagement in a few minutes. I first want to take this opportunity to commend you for holding this hearing. When I was chairman of the Judiciary Committee from 1981 to 1987, I remember you were chairman then of the Immigration Subcommittee and did such a fine job.

I want to say, further, we are very pleased to have the Attorney General here, and the Governor of Florida, my good friend, Governor Chiles. I have some questions for the Attorney General and Governor Chiles and some members of these panels, and I would ask unanimous consent that they be allowed to answer those for the record, since I have got to leave.

Senator SIMPSON. They indeed will be part of the record. So ordered.

[The questions of Senator Thurmond and responses will be found in the appendix.]

Senator THURMOND. I wish to commend the Senators who testified this morning. I think they did a very fine job.

I don't know of any one question that is more important than this immigration question. It is one that has got to be attended to, and I hope we can get prompt action on this bill and pass it through the Senate and through the House and make it law.

Thank you very much, Mr. Chairman.

Senator SIMPSON. Thank you, Senator Thurmond. No one gave me more support and encouragement or kept me going more than you. You allowed me to go forward with the subcommittee without any restrictions whatsoever, and often came to the hearings—"What do you need? What can I do to help?" I shall never forget that kind of support. It meant a great deal to me, just as your friendship does. Thank you, sir.

**OPENING STATEMENT OF HON. ALAN K. SIMPSON, A U.S.  
SENATOR FROM THE STATE OF WYOMING**

Well, let me intrude into the Attorney General's time just a bit because I didn't make a statement. I am going to shorten it all up, then I will recognize Senator Simon for a brief statement, representing the ranking minority member, Ted Kennedy. My friend, Ted, is with Orrin Hatch. They are at the memorial services of Senator Hatch's mother, who died. Ted and Orrin are both there, which reflects part of the uniqueness of this place which people never see. They don't choose to see it often here. So I will recognize Senator Simon in a moment.

Just to summarize and say, I guess, here we go again. There is a bill in and we are going to consider all the legislation that is before us. I hope that if any of our colleagues have any legislation, they will get it in as soon as possible. We will proceed with hearings on all of it together or separately.

This hearing is a first step in what will be an intensive effort by this subcommittee to deal with this issue. I will give it the same level of energy that I gave it in the early 1980's when we held 22 hearings—I don't want to have that many again—and consulta-

tions in the 96th Congress. This issue was important then. It is more important now.

I look forward to working with Ted Kennedy and other members of the subcommittee. Paul has been with us; just a three-member subcommittee in these past years. Someone we will all miss is our old friend, Jerry Tinker, but I am pleased that Michael Myers has returned to the subcommittee as staff director from the minority. Dick Day will be here at my side, my good right arm on this issue. I know our staff will work closely in this immigration reform effort. It is an effort that does not lend itself to partisanship in any way, and that is why I did not stir greatly when I was a member of the leadership of the party. I don't believe there is anything like a Republican immigration bill and there is no such thing as a Democratic immigration bill.

The American people are fed up and disturbed. They are not in accord with our policies.

They see people violating our law. They come here, are treated hospitably, yet violate our laws. We are not a nation of lawbreakers. We have hundreds of thousands illegally every year. We have the others who come legally, but overstay their visas. They don't leave. We don't know how many are there.

We give some people asylum consideration. In the meantime many of them receive work authorization, which, of course, is the singular thing they were seeking from the beginning.

The American people are feeling outraged. They wonder why people don't leave when they are supposed to. People are unhappy.

The law says employers may not knowingly hire illegals, yet the practice continues because of the lack of a reliable method of work authorization. This was predictable in 1986. That is why we required the President to implement changes and why we mandated studies. Yet 9 years later after Republican Presidents and Democrat Presidents, we are still without a satisfactory system; without any effective enforcement of employer sanctions, which is the most appropriate way available for reducing the incentive for illegal immigration.

The people are also worried about the abuses of the country's humanitarianism. This includes the manner in which tens of thousands of people are admitted each year as refugees, with all the special privileges and immunities of that unique and cherished status, even though their claims of political persecution are questionable, at best. It also includes the way claims of persecution made by persons from certain countries are judged by different standards, with the result that many are granted a status not possibly available to others who come from elsewhere. I call them State Department refugees.

People are disgusted with the abuse of asylum. They are unhappy with the abuse of the Attorney General's parole authority, intended to be used on a case-by-case basis. Senator Kennedy and I were involved in drafting the Refugee Act of 1980. That has been seriously distorted when we presume refugee status and not give it case-by-case, or misused parole authority. Those things are wrong.

They are galled with the abuse of the public assistance programs. The people can't understand, if a sponsor brings a person over

here, why isn't he or she responsible for that person while they are here, so they do not go on to the public assistance pattern. The people want the income and assets of sponsors to be taken into consideration when financial need is determined for welfare eligibility.

They are also troubled with our regular legal immigration. They think the numbers are too high. Senator Bryan's numbers and Senator Reid's numbers are far below anything I have offered, and I feel that when their proposals come to the floor of the Senate, they will likely pass. That will be a sure signal of the people's mood in this area.

Then we have the many individuals who write us questioning whether immigrants are generally integrating fully into the American society. They are annoyed by the Government programs that are seemingly intended not to promote Americanization, as in all of the history of our past high immigration eras, but rather to actually inhibit assimilation and promote divisiveness, often in the name of multiculturalism.

The American people find it a sad mystery why we maintain a system under which a person can immigrate here, then declare himself or herself a member of a disadvantaged group and thereby be eligible for special benefits.

They are dispirited with all of these elements and they are tired, oh, so very tired, of being told when they want immigration law enacted to serve their, quote, "national interest" and when they want the law enforced, that they are being cruel and mean-spirited and racist, and that they alone, of all the peoples in this old world, do not enjoy the most fundamental right of any people, and are made to feel guilty if they do, which is the right to decide who will join them and form the future country in which they and their descendants will live. That is what this is about.

The American people are agitated. There is something wrong. I think they have good reasons for their feelings, and I am going to do my level best, my very utmost, to present proposals to my colleagues which will help to correct all of those programs.

The first step is S. 269. The next will be INS oversight hearings, a duty sorely neglected in the Senate in recent years, under my previous watch, too. I would hope that such an oversight hearing, involving INS Commissioner Meissner will help Congress and the administration work together toward a more effective agency.

Then I will introduce a legal immigration bill that will contain new and lower limits on immigration, assign a much higher priority to immigrants with skills and other characteristics consistent with the needs of the Nation as a whole, and reserve family-sponsored immigration to only the closest of family members, those most likely to actually live together in this country and most needed for the proper raising of their children. We will do this in a fashion not nativist, not ugly, not mean in spirit, but with good common sense and wisdom and determination. Surely we are up to that challenge.

[The prepared statement of Senator Simpson follows:]

## PREPARED STATEMENT OF SENATOR ALAN K. SIMPSON

Greetings. These hearings on the bill I introduced in January and other legislation to control illegal immigration, are an important first step in what will be an intensive effort by the Subcommittee in this Congress to deal with the important issues of illegal and legal immigration. I intend to give the same level of energy to the effort that I did in the early '80's. The issue is very important to the American people, and they have made that so clear to us.

I look forward to working closely with Ted Kennedy and the other Members of the Subcommittee. Something we will all miss in this effort is our friend Jerry Tinker, but I am pleased that Michael Myers has returned to the Subcommittee as staff director for the Minority, and I know our staffs will again work closely in this immigration reform effort—an effort that does not lend itself to partisanship.

A significant majority of the citizens of the United States are not at all in accord with our current immigration policy.

They are very disturbed at the immense number of foreign nationals who violate U.S. immigration law—not only the hundreds of thousands who cross our borders illegally every year, but the possibly equal number who enter legally, but do not leave when their visa period expires. I say “possibly equal number” because it is not even known to us how many foreign visitors to this country do not leave when they are required to. That we do not have this basic information is outrageous in itself—and the American people feel that outrage, too.

Our people are also unhappy that the law says employers may not knowingly hire illegal aliens, yet the practice continues, apparently with little abatement—because of the lack of a reliable method to verify work authorization. This disgraceful situation was predictable when the law was enacted in 1986. That is why it required the President to implement changes to make verification more reliable and secure—and why it mandated studies of several possible improvements. Yet here we are 9 years later, still without a satisfactory system and thus without effective enforcement of employer sanctions—which is the most appropriate way available for reducing the incentive for illegal immigration.

The people are also worried about the abuses of this country's humanitarianism. This includes the way tens of thousands of persons are admitted each year as refugees, with all of the special privileges and immunities that unique and cherished status brings, even though many of their claims of political persecution appear questionable at best. It also includes the curious way the claims of persecution made by persons from certain countries are judged by different standards, with the result that many are granted refugee status who would not possibly qualify if they came from elsewhere—I call them State Department refugees.

The people are disgusted with the abuse of asylum—the endless delays and appeals, the granting of entry into the community—often with authority to work—to applicants before they have made any showing at all that they even qualify.

The people are unhappy with the abuse of the Attorney General's parole authority. This enables the admission of persons who are otherwise excludable under our law. It was intended to be used on a “case-by-case” basis for short-term entry, in emergencies or when it would result in substantial public benefit. However, it is now used to bring in groups of tens of thousands, few of them meeting the originally intended standards. Plain wrong.

They are galled with the abuse of public assistance programs. They do not understand why we admit immigrants who then use public assistance for substantial periods of time beginning soon after their entry. They want sponsors who give their promise to be financially responsible for an immigrant to be legally required to do just that. And they want the income and assets of sponsors to be taken into account when their sponsored immigrant relative seeks public assistance.

The people are also troubled with our regular legal immigration system. They are sure the numbers are too high. They wonder if we know where we are going or what we are doing with our immigration policy. And they would probably be even more troubled if they knew how small is the proportion of immigrants selected specifically on the basis of characteristics believed to most benefit the nation as a whole—rather than the immigrants themselves or the U.S. residents who are their relatives. Less than  $\frac{1}{5}$  of immigrants are admitted under categories defined on this basis and most of that fraction are actually family members of the persons with the qualifying characteristics.

And many people who write to us question whether immigrants are generally integrating fully into American society. They are annoyed about the many government programs seemingly intended—not to promote “Americanization,” as in all the history of our past high-immigration eras—but rather to actually inhibit assimilation and promote divisiveness, often in the name of “multiculturalism.” And the Amer-

ican people find it a sad mystery why we would maintain a system under which a person can immigrate here, then declare himself or herself a member of a "disadvantaged group," and thereby be eligible for special benefits not available to citizens.

The American people are dispirited with all of these elements of current immigration policy—with every aspect: with the lack of enforcement of immigration law, with the abuse of humanitarian provisions, even with the regular operation of that law.

And they are tired—oh so very tired—of being told, when they want immigration law enacted to serve their national interest and when they want the law enforced, that they are being cruel and mean-spirited and racist, and that they—alone of all the peoples in this old world—do not enjoy the most fundamental right of any people—are made to feel guilty if they do—to decide who will join them and form the future country in which they and their descendants will live.

So, what does it mean that a large majority of the American people are so agitated about immigration? Is there something wrong with them?

I do not think so. I think they have very, very good reasons for their feelings.

As I see it, one meaning of the people's terrible unhappiness in this area is that we in Congress are failing them badly.

I personally am going to do my level best—and I mean my very utmost—to present proposals to my colleagues which will help to correct all these problems.

As a first step in that effort, I have introduced S. 269—to reduce illegal immigration; to reform several humanitarian provisions now being abused; and to increase the likelihood that immigrants, with the help of the sponsors with whom they are being reunited, will be self-sufficient and not burden the taxpayers. These are the subjects to be covered in the hearing today.

Next, the Immigration Subcommittee will conduct an INS oversight hearing, a duty that I believe has been sorely neglected in the Senate in recent years—under my previous watch, too. I would hope this oversight hearing will help Congress and the Administration work together toward a more effective agency.

Thereafter, I will introduce a bill to reform legal immigration. I expect this bill to contain new and lower limits on immigration; to assign a much higher priority to immigrants with the skills and other characteristics consistent with the needs of the nation as a whole; and to reserve family-sponsored immigration for only the closest of family members—those most likely to actually live together in this country, and most needed for the proper raising of their children. We must do this—and in a fashion not nativist, not ugly, not mean in spirit—but with good common sense and wisdom and determination. Surely we are up to that challenge.

With that introduction and preview, let us proceed to first panel of four of our colleagues, all of whom have shown an intense interest in the reform of our immigration laws, and three of whom live in some of the most immigration-impacted states in the country.

**Senator Simon.**

**Senator SIMON.** Thank you, and I shall be very brief. We thank Attorney General Reno and Commissioner Meissner for their leadership. I have the feeling, and I think this is widely shared, that we have two capable, competent people who are concerned in this area.

Clearly, the interest in this issue has exploded. As Senator Simpson mentioned—and he and Senator Kennedy are the two leaders in this. I have come along here more recently, but we had three members of the subcommittee because no one else wanted to get on the subcommittee, and when we had hearings, ordinarily, we would have 8, 10 people here. All of a sudden, we have media interest; we have a packed hall here with people lined up outside.

I think it is important to underscore once again that legal immigration is a great plus for this country; it has been and it continues to be. Those who come as legal immigrants are an asset to our country, but there are concerns. For example, when Senator Bryan mentioned that 10 percent of those in public housing in Reno, NV, are illegal immigrants, while you have 500 people who are American citizens waiting to get into public housing, that is the kind of

thing that gets the public aroused that is indefensible. We have to deal with that.

The hearing testimony of the four Senators this morning understandably concentrated on the 50 percent of the problem of illegal immigration that is connected with our southwest border. There is that geographical concentration, and I think both the administration proposals and Senator Simpson's and others call for dealing with that, and we should.

Employer sanctions are very much a part of what we have to look at, and that has to include, I think, some kind of check, maybe modified from what Representative Barbara Jordan and her commission recommended, but something along that line has to be there if employer sanctions are to be meaningful. We need stricter enforcement of the wage and hour laws, and I think virtually everyone calls for increased penalties for fraudulent creation of documents. Those are among the things that we have to look at.

Let me add one relatively small, in terms of numbers, item that I am also going to try and get into whatever emerges, and that is how we deal with adoptions. First of all, we continue to use a phrase, "illegitimate child," which I have to say bothers me. "Child born out of wedlock" is how we are generally referring to children more and more, but the fact that we continue to require both biological parents of children born out of wedlock to sign in the adoption process has in many countries just brought adoption of foreign children to a grinding halt, and I think we have to look at that.

Then we have to look at the other 50 percent of illegal immigration that is not southwest border-related. You used the phrase—I jotted it down here somewhere—"sensible, credible legislation," Mr. Chairman. I think that is what we all want. We want legislation that deals rationally with the situation, and if this subcommittee and our committee doesn't produce sensible, credible legislation, then on the floor we are going to get some emotional type of response to the problem.

The mood in the country, and I fear the mood in the Senate, is that almost anything that is punitive at this point can pass, and I think that is not the direction that we ought to be going. I think we have to look at this problem as a real problem and come up with real, sensible answers.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you so much, Paul. I look forward to working with you.

Now, if you would please proceed, Madam Attorney General. It is nice to have you here again.

**STATEMENT OF HON. JANET RENO, ATTORNEY GENERAL, U.S. DEPARTMENT OF JUSTICE, ACCCOMPANIED BY DORIS MEISSNER, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE**

Attorney General RENO. Thank you very much, Mr. Chairman. I really appreciate this opportunity to be with you and members of the committee. We have had a wonderful working relationship. You asked me what I knew about immigration and I told you of my experience in Florida, not the southwest border, but another State

heavily impacted by illegal immigration, and the frustration that I faced as a prosecutor for 15 years.

It has been a great privilege for me to work with you and other members of the committee in a truly nonpartisan effort to address what I think is one of the critical problems in America—how we retain this Nation's tradition of legal immigration and do it the right way, while at the same time taking effective steps to control illegal immigration and to give the Immigration and Naturalization Service, an agency that has been so long neglected, the tools to do the job. You have been wonderful to work with, and I look forward to a continued cooperative effort.

The administration strategy to fight illegal immigration includes four prongs; first, regaining control of our borders; second, aggressively pursuing criminal aliens; third, expanding worksite enforcement to remove the job magnet and deport illegal workers; and, fourth, providing the INS with the resources it needs to be effective.

Although we are working diligently, effective enforcement of our borders cannot be achieved overnight. We are beginning to see signs of success, however. Operation Hold the Line has now been in place for 20 months in El Paso and apprehensions have plummeted by 63 percent from this time last year. The number of people attempting illegal entries at JFK Airport in New York has dropped 48 percent in the same period because of cooperative efforts with airlines, the availability of more detention space, and our asylum reforms.

In addition, 5 months ago we launched Operation Gatekeeper in San Diego to deter illegal crossers from the Imperial Beach area and shift them east, where the terrain gives the Border Patrol the advantage in preventing them from crossing. That strategy is beginning to work. During February, Imperial Beach apprehensions were down 41 percent for the same period last year.

Next, we will fortify eastern portions of the San Diego sector with more agents. In fact, 46 new Border Patrol academy graduates will be heading for San Diego this Friday. We are continuously monitoring the number of apprehensions and other indicators from the southwest border. Because we anticipated an increase in apprehensions in Arizona, we launched Operation Safeguard, which will add 100 Border Patrol agents to the Tucson sector by the end of this year. Last month, the President detailed 62 Border Patrol agents to Nogales to provide immediate assistance to the Tucson sector force.

I am closely monitoring our progress in hiring and training new agents. I have this year gone from the Pacific Ocean to the Gulf of Mexico, from San Diego to El Centro, to Nogales, to El Paso, to Del Rio, to Laredo, and to Brownsville. It is a tremendous border, and it requires a comprehensive effort, and it requires staffing. I am doing everything I can to ensure full staffing of the Border Patrol, and at the same time to make sure that training and professionalism do not suffer while the force is expanding so rapidly.

As the size of the Border Patrol grows, we must have in place mechanisms to guard against human rights abuses. I am very pleased that the citizens advisory panel will be having its first meeting next month. I established this panel to review civilian

complaints of abuse filed against INS employees and the INS procedures for responding to such complaints.

We must support our agents with the right mix of advanced technology, barriers, and equipment. During my trips to the southwest border over these last 2 years, I have had the opportunity to see an agent alone on the border without technology, without sensors, without lights, without the real resources that can make his work so much more effective. I saw that by providing agents with the technological support they need, it is making them work far more efficiently.

We are working to remove criminal aliens from the United States as rapidly as possible by streamlining deportation procedures and expanding the Institutional Hearing Program and the International Prisoner Transfer Treaty Program. The IHP is a cooperative effort between the INS, the Executive Office for Immigration Review, and Federal and State correctional agencies to conduct deportation hearings for convicted criminal aliens while they are still serving their prison sentences.

INS and EOIR are concentrating on improving the efficiency of the IHP in the five States that have the largest numbers of foreign-born inmates—California, Texas, Florida, New York, and Illinois. During fiscal year 1994, INS deported 21,992 criminal aliens, including 6,000 through the Institutional Hearing Program. Our goal for this year is 23,250 deportations, including 8,250 through the IHP. We plan to be able to deport 58,200 criminal aliens during fiscal year 1996, including 23,700 through the IHP. INS plans to triple its deportation of all illegal aliens from 37,000 in 1993 to 110,000 in fiscal year 1996.

Deterring illegal immigration occurs not only at the border, but also through worksite enforcement, since most illegal immigrants come to the United States to work. We plan to focus our enhanced enforcement efforts on targeted deterrence zones which will be in the seven States with the largest number of illegal immigrants—California, Texas, Arizona, New Jersey, New York, Florida, and Illinois—and we will concentrate on selected industries that historically have attracted illegal workers. We expect apprehensions of illegal aliens at worksites to increase by more than 60 percent in fiscal year 1996.

In addition, we are working to streamline the employment authorization verification system and make work authorization documents more fraud-resistant. We are moving forward with carefully tailored employment verification pilots, as recommended by the Jordan Commission. We are committed to developing the most cost-effective, fraud-resistant, and nondiscriminatory method possible for verifying work authorization.

The fiscal year 1996 budget request includes \$550 million in assistance to States to offset costs associated with illegal immigrants, an increase of \$383 million over fiscal year 1995. We are proposing \$300 million for the State Criminal Alien Assistance Program, which received \$130 million this fiscal year. This administration is the first to seek funding from Congress to reimburse States for a share of the cost of incarcerating criminal aliens.

Our fiscal year 1996 budget request also includes \$150 million for discretionary grants to help States with the large number of un-

documented migrants to pay for certain emergency medical services, Department of Education grants of \$100 million for school districts with large numbers of newly arrived immigrant students, and \$3 million to expand the law enforcement support center pilot project which assists State and local law enforcement in determining the immigration status of serious felons or suspected aggravated felons.

The administration is submitting to Congress a comprehensive legislative initiative to give us additional statutory tools for reducing illegal immigration and the resulting costs to taxpayers. This legislation will aid with border control by, first, allowing aliens to be excluded from entering the United States during extraordinary immigration situations or when the aliens are arriving onboard smuggling vessels. Persons with a credible fear of persecution in their countries of nationality would be allowed to enter the United States to apply for asylum.

The legislation would impose new civil penalties of \$500 a day for failure to depart. It would amend the definitions provided in the RICO statute to authorize its use to pursue alien smuggling organizations. It would give INS wiretap authority for alien smuggling cases, and it would expand asset forfeiture authority for alien smuggling. It would substantially increase the criminal penalties for alien smuggling, illegal reentry, and failure to depart. As recommended by the Jordan Commission, it would authorize a border services user fee to hire additional INS inspectors and improve facilities at participating ports of entry.

This legislation will enable INS to remove an increased number of criminal and noncriminal aliens more quickly by streamlining deportation and exclusion procedures, including appeals processes. It would authorize Federal courts to require consent to the deportation of criminal aliens as a condition of their probation. It would permit new sanctions to be imposed against countries that refuse to accept the deportation of their nationals from the United States. It would authorize INS to use volunteers to provide administrative assistance with criminal alien removal, as well as naturalization and certain adjudications at ports of entry.

Finally, the legislation will help effective worksite enforcement and work authorization verification by authorizing a national employment verification pilot program to conduct tests of various means of verifying work authorization status. It would reduce the number of documents that can be used for work authorization by citizens and noncitizens to six. It would substantially increase the criminal penalties for immigration document fraud.

Our legislative proposal shares many of the key features of S. 269, Mr. Chairman, and we look forward to working with you to see if we can't come up with a good, solid effort. I look forward to working with you and all members of the committee over the next year as we work to forge a legislative package with bipartisan support.

We have studied the recommendations made last September by the U.S. Commission on Immigration Reform. Commissioner Meissner has met with Barbara Jordan. I have corresponded with the chairman, and we are going to move forward, working with the Commission in these initiatives.

Although we have accomplished a lot in the last 2 years, the demands that the INS faces still are unprecedented. It was an agency that was neglected. We are addressing those issues. It is an agency that has tremendous challenges in terms of the Cuban situation and the Haitian situation last year and the issues along the Southwest border. It is an agency that is growing significantly. All of those present an extraordinary challenge and we look forward to working with you to meet that challenge in every way possible.

Senator SIMPSON. Thank you very much, General. Truly, I am looking forward to this. You and I have worked together on things where we were very closely in accord. Then, of course, sometimes the filter system through the White House itself does tend to lower our expectations, in all White Houses since I have been here.

Attorney General William French Smith was my greatest ally and we worked well together. You have certainly done it on the same plain and level as that distinguished gentleman. Others have not always been helpful, and Presidents have not always been helpful.

Immigration is hot. You could see what can happen during the last election. It was real hot, except now they are all aboard. We have to, as Paul says, be very careful. I am ready to do a lot of things, creative things, and I know we will, with Senators Feinstein and Hutchison and Kyl and Bryan, and Paul, and all of us here, new and old on the committee.

So we will go now into 5-minute question rounds. I will proceed, and then next will be Senator Simon and then we will alternate in order of appearance, those who have arrived here earlier, if they wish to inquire. So, hit the bell. I will be watching it very carefully.

I understand the administration is considering the adoption of special exclusion procedures for use when arriving aliens exceed our inspection capacity, similar to the reforms we proposed for aliens who arrive with fraudulent travel documents or no documents at all, and I would just appreciate your views on how we might harmonize those proposals.

Why should we use those programs or procedures only in the cases of emergencies? Are there other circumstances in which it might be unnecessary or inappropriate to apply the full measure of exclusion or deportation proceedings?

Attorney General RENO. I think we look forward to working with you to address this issue because if I understand your question—and I will ask Doris to chime in if she has any additional information that she would like to add—we have worked carefully without the necessity for invoking an emergency with carriers and others as they come into the country to substantially reduce those numbers claiming asylum and presenting fraudulent documents.

We feel that the proposal that we make can address the problem more effectively and that it would not require the full staffing that would be required if we were to consistently provide for an asylum process short of an emergency.

Ms. MEISSNER. I would add only this point, and that is that we have undertaken an ambitious reform of the asylum system itself. That reform is now in place, with the publication of regulations in January. The staff is almost fully hired and we are finding that we are able indeed to meet the deadlines that we established for our-

selves of interviewing cases within 60 days. So we believe that that is the best way to pay for the best use of our funds, and the emergency authority that the Attorney General has described, we think, is adequate to emergency situations when they arise.

Senator SIMPSON. Let me ask you, since we are right into asylum, in light of the backlog and the abuses all over the world of asylum—the German Government has had to deal with that. We have the most generous asylum provisions of any country on earth and we are becoming overwhelmed. When you do that, you get overwhelmed because of the nature of people fleeing—not fleeing, just wanting to get out of their country; they don't like it anymore. They don't like the turmoil in it. They go through three or four other countries and get here and say they are seeking asylum.

Well, if you are seeking asylum, the minute your foot hits the country where you went, that is asylum. I hope we are hearing that. You don't travel the world over and suddenly say, here I am, I am seeking asylum. Asylum is a cherished thing and it goes to people who are fleeing persecution.

So we have this huge backlog and abuse of our system. Why shouldn't we require that aliens who claim they are fleeing persecution—and that is what asylum is, fleeing persecution based on race, religion, national origin, or membership in a political or social organization. That is the U.N. designation and that is our designation.

Why don't we require that those who claim that they are fleeing, who are legitimate, make their application as soon as they arrive in the United States? If we allow for late applications based upon changed circumstances, couldn't we better protect the truly oppressed if our law required that applications be filed, say, within 30 days after the alien enters the United States while the facts and the persecution that they allege are still fresh in their minds?

Attorney General RENO. I think we can work together to address this issue, but there are a number of reasons why an individual might not be prepared to apply for asylum as soon as they enter the United States. Some are not familiar with the laws. There are circumstances that would prohibit them from being able to obtain counseling or assistance in that time period. It would be inequitable if there was a true basis for persecution for asylum. Finally, as a practical matter, it is sometimes difficult to determine when they entered the country and you would be providing an opportunity for litigation.

We will work with you in addressing your concern and seeing if we can't resolve something that meets everybody's approval, but those are our immediate concerns with such a suggestion.

Senator SIMPSON. Well, I will look forward to working with you on that, but I think at least for me that I am going to tire of lawyers' exercises in this area as to how brilliantly they can get around and file and do all the things they do, and also defraud, in that sense—and I am a lawyer—defraud people, saying that they need their legal services, when you, the INS, could furnish those services free of charge. We are going to look into that one, too.

Attorney General RENO. I think you will be pleased with the way the regulations have been implemented, with the way we are able to meet the time limits, clear out the backlog, and provide for an

asylum system that I think people can have confidence in and that will prohibit the abuses that you have described.

Senator SIMPSON. That will be helpful, and we will.

Senator Simon.

Senator SIMON. Thank you. One question that emerged out of the earlier testimony—and I think, Commissioner Meissner, you were here when Senator Hutchison indicated that Silvestre Reyer, the person in charge of the El Paso operation was not permitted to testify in the House to tell the story of what has happened there. Is that accurate? If so, why wasn't he permitted to testify?

Attorney General RENO. I heard her on the television and I was puzzled because my understanding was that Silvestre Reyes testified last Friday, made a statement, presented a statement, and described just what he had done during Operation Hold the Line. So I will be happy to check with the Senator and clarify her concern.

Ms. MEISSNER. Let me just add to that that I was there. Chief Reyes was with me, as was Gus de la Viña from our western region. We were with the committee for more than 4 hours. There was a full discussion.

Senator SIMON. So as far as you know, there is no truth to that allegation at all?

Attorney General RENO. I will follow up and see what her concern was, but I was puzzled because I had heard that he had done a wonderful job in making a presentation.

Senator SIMON. All right. How important are the border crossing fees that are being talked about to your border enforcement effort?

Attorney General RENO. The border fees are for building the infrastructure at ports of entry. The ports of entry are not controlled by the Border Patrol which provides the enforcement between ports of entry, but Immigration and Naturalization Service inspectors staff the ports of entry.

If you have been down to the border or have flown over a port of entry, you will see lines going back for several miles and there are waiting periods as people come through the border. The desire of the border fee is to build up that port of entry to put it back into the infrastructure, to provide for additional lanes, to provide for additional staffing to promote legal commerce and trade. The whole purpose of the fee would be to file that back into that port of entry so that it could be a model for effective flow of legal commerce.

Senator SIMON. And without the fee, you simply don't have the resources to do that, is that correct?

Attorney General RENO. Well, you have the resources to do what we are doing now, but one of the big complaints we get is it takes so long to get through the border. As we improve the enforcement between the ports of entry through our enhanced efforts with the Border Patrol, you put more pressure on ports of entry with what we call lane runners or port runners who try to get through illegally at the port of entry.

Senator SIMON. Senator Simpson's bill has in it the repeal of the Cuban Adjustment Act. I have over the years been a sponsor of special provisions for people from Poland, people from the old Soviet Union, and so forth. Unless I hear sound evidence to the contrary, I am moving toward a belief that we ought to be treating all

people the same, and if someone is a genuine refugee, treat that person as a refugee regardless of what country he or she is from.

I would be interested in the response of the two of you to that general concept, and specifically to Senator Simpson's suggestion.

Attorney General RENO. The administration does not support the repeal of the Cuban Adjustment Act. Our long-term goal is to bring democracy to Cuba. It sticks out as a nation that does not enjoy the benefits of democracy like a sore thumb, and we are absolutely committed to the goal of democracy in Cuba. But until Cuba has a democratic government, we need the flexibility to respond appropriately to changing conditions.

We look forward to the time when Cuban migration to the United States is normalized and is on a par with other countries that are enjoying the benefits of democracy. We took a major step toward normalizing migration from Cuba to the United States when we signed the joint communique with the Cuban Government guaranteeing annual migration of at least 20,000 Cubans to the United States legally, in accordance with appropriate processes, and we want to do everything we can for those ultimate goals of democracy in Cuba and a normalization of the migration process.

Senator SIMON. I see my time is about up, and I will take a second round. Let me just say I think that our policy toward Cuba is one that has grown out of passion and not reason. If the old Soviet Union and Cuban leaders had sat down and said, let's devise a United States policy that will assure Castro can stay in power, I don't think they could have devised a better policy than that which, in fact, we have.

I don't like Castro's human rights policies. I have to say candidly I don't know that they are any worse than China's. We give China MFN status. I would think that some minimal type of trade—I know this goes beyond the problems of your jurisdiction, but at least selling food and medicine to Cuba, I don't think would harm the United States of America and might move toward that goal of democracy more than our present policy, which is a policy that, as I said, grows out of passion rather than reason. I am not sure that the Cuban Adjustment Act does one whit to bring democracy to Cuba.

I yield.

Senator SIMPSON. Amen, brother, amen. We will get into that. Yes, I know it will come up. Thank you very much. You always have a thoughtful comment on so many things we work on. That is one we are going to address, and we will hear from our former colleague, Senator Chiles, and we will have some other hearings on that issue as to whether it makes sense. It made a lot of sense in 1960, or the middle 1960's.

Senator Kyl, please.

Senator KYL. Thank you, Mr. Chairman; just a brief comment and then a couple of questions.

On this matter of the lanes and the need to speed up the commerce, I want to add to what the Attorney General said. When you see the long lines at these border crossings and you realize that a lot of the people in those lines are Americans and Mexicans who go back and forth across the border many times a day in these border communities where you do business on both sides of the bor-

der—families on both sides, and so on—and you take 20 minutes to half an hour each time you cross, it is a real burden.

Second, it, I think, fosters some illegal immigration by Mexicans, for example, who would otherwise like to come across and shop. You find them going through a hole in a fence instead of waiting all that time. Third, it puts a lot of pressure on the Customs people to speed up their checks, and that is the way that illegal contraband, and so on, comes into the country. So improving that condition could help all three of those problems.

I do have a concern about the fee, if the Attorney General would like to respond to it. With the peso devaluation, even the \$1 fee that Senator Feinstein recommends is an awful lot of money to a Mexican family coming across perhaps to do some shopping, and I am not sure that that fee is the right way to go. I would rather see us bite the bullet and provide the funding in another way.

But, Attorney General, if you would like to comment on that, please do.

Attorney General RENO. Senator, as you know, I have visited Nogales now twice and it has been important for me to see those holes in the fence. Some of them are described as \$5 holes, \$10 holes, and so I am not sure that the border fee might not be a less expensive way.

I think one of the issues—we have talked to the mayor of Nogales and I have visited with city officials. I think we all need to work together to try to address how we build that infrastructure. If we do it the right way, if we have appropriate discounts for people who come across the border regularly, we can do so much if we approach it from a creative point of view, with the interests of Nogales at heart, with the interests of controlling illegal immigration, and I would like very much to work with you and representatives in Nogales to address concerns and to further explore issues.

Senator KYL. I appreciate that response. In your testimony, you said under these prisoner transfer treaties prisoners convicted of crimes in foreign countries may serve their sentences in their home nations. The offender's transfer is voluntary and is subject to the approval of both the sending and receiving countries.

Under the treaty that we have, for example, with Mexico, if we have a Mexican alien felon in our prison, that felon has to agree to be transferred to Mexico. I have a bill which would encourage the President to renegotiate that treaty, or those treaties.

Assuming that we can guarantee that the prisoner will serve his time in Mexico, just to cite one country, why should we have the provision that allows the prisoner himself or herself to be the final veto over whether or not that person is sent back to their home country?

Attorney General RENO. We are working with Mexico on the possibility of eliminating the prisoner consent to transfer requirement, but there are some issues. One is Mexico's capacity to continue to imprison them, and one of the concerns that I have is that there are some people who, if we can get them out of the country, fine; they may not have to serve the rest of their term, but they are limited to non-violent offenders in certain specific categories.

If I return somebody, expecting and anticipating institutionalization and imprisonment and they continue to serve their sentence,

I want to make sure that there is the capacity to do that, so that there is the real practical issue of does a nation have the capacity and that is another issue that we are exploring.

We want to do everything we can to make sure that we shift these people from our Nation as appropriate. There are some we don't want to send back because they are so dangerous. We want to make sure they serve their full sentence.

So I will try to work with you. I very much enjoyed our chance to visit, and this is something of concern to me because in the figures that I have cited there are significant people in our prisons, State, local, and Federal, that could very well serve the sentence abroad.

Senator KYL. I certainly agree with the qualifications you added. My question went specifically, though, to the issue of whether it should be U.S. policy to have in these treaties the voluntary repatriation; that is to say the consent of the prisoner being the determinant as to whether or not, even if all of the other conditions are satisfied, in our view, that prisoner is sent back.

Is it your view that that provision should be eliminated from these treaties if at all possible?

Attorney General RENO. We are trying to work with Mexico to do that. There are some situations, as I understand it, and I am not an expert in this area, where there are human rights concerns that I think everybody would share with respect to certain nations and we have got to address those, but it is something that we are working on.

Senator KYL. Thank you very much.

Senator SIMPSON. Thank you, Senator Kyl.

Now, to Senator Feinstein, and then to Senator DeWine, and then Senator Leahy, in that order.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

Welcome, Attorney General Reno and Commissioner Meissner. It is good to have you here. I wanted to ask my first question on the subject of the immigration emergency fund, and I chatted a little earlier with Commissioner Meissner about it, but let me lay it out the way I understand it.

In 1990, Congress first appropriated \$35 million to the fund, rescinded \$4.4 million in the 102d Congress, added \$6 million in 1994, and an additional \$75 million in 1995. Ten million dollars was rescinded in the Senate last week, but the fund, as nearly as we can determine, contains \$101.6 million.

Now, under the new rule just put in place, there is now a definition of an immigration emergency, which is, and I quote, "An actual or imminent influx of immigrants of such magnitude that effective administration of the laws of the United States is beyond the existing capabilities of the INS in the affected area or areas."

The new INS statistics show apprehensions in the San Diego sector, all locations, are up 25 percent for the week ending March 12 over the same week last year. Now, Gatekeeper began in October, so if you compare March to March, you get pre-Gatekeeper and Gatekeeper. This indicates to me that there are more people coming over the border.

I think this was anticipated following NAFTA. Every expert report I read said that we could look for more illegal immigrants,

short term, crossing the border, and then certainly with the fall of the peso, we knew we would have more. As I understand Gatekeeper, it has been effective in Imperial Beach, and I am looking at the official forms, by really reducing numbers there, but numbers have greatly expanded everywhere else throughout that sector.

My question to you is this. You have a special emergency fund. It has never been tapped. Why?

Attorney General RENO. The emergency fund, as we understand it from its historical analysis, was to be prepared to deal with a massive emergency migration and not the regular course of migration that has occurred up and down over the 1980's and into the 1990's.

There could be an emergency situation that makes the present situation pale, and we need to be prepared for it. We saw the situation beginning to develop in south Florida in August. We developed the safe havens alternative at Guantanamo as a means of avoiding a massive, immediate immigration.

I think that the distinction that we are trying to draw is we need to support and assist the States in an orderly way with respect to criminal aliens with respect to the assistance that I have described, and do that with the States that have a regular course of immigration through the reimbursement for criminal aliens, through the education fund, through assistance in terms of emergency medical care. This immigration emergency fund is to be prepared for a true emergency, a drastic emergency.

Senator FEINSTEIN. Well, if the passage of proposition 187 in California doesn't convince people, and the numbers in California, that there is an emergency situation in California, I am really doubtful that anything will, to be very candid with you.

Attorney General RENO. Well, I think the appropriate way to do that is to address it from the point of view of identifying the number of undocumented criminal aliens in State prisons and providing for proper reimbursement, providing for reimbursement in terms of emergency medical care, and for educational situations as we have described, and to do it in a more orderly way consistent with the flow of immigration.

Senator FEINSTEIN. Well, of course, just the federally mandated cost of immigration in California for the three programs that are federally mandated is \$2.6 billion for California alone. This Government is never going to appropriate that kind of money. Therefore, I would only implore you to understand that I think California is in an emergency situation. Its numbers are far above any other State.

You have got apprehensions going up. You have got increased crossings going on. I mean, I really don't know what it is going to take to convince this Government that there is a special problem, but let me go on to United States-Mexico cooperation at the border, if I might.

I understand there is a group called Group Obata, which is a Mexican special police unit charged with protecting Mexicans from abuse at the border, and that they have publicly said that they are forbidden from preventing illegal border crossings.

What efforts have—I gather my time is up. I got the new pink card, Senator.

Senator SIMPSON. It is better than tapping on the gavel with your colleagues.

Senator LEAHY. Or tapping on their heads, like he used to.

Senator SIMPSON. It is calligraphy.

Senator FEINSTEIN. You wait so long for this and then, boom, it is gone in an instant.

Senator SIMPSON. It is calligraphy. You notice there it is very cleverly—the card is beautifully prepared.

Senator FEINSTEIN. It is beautiful. [Laughter.]

I will heave to and pass the card back, but perhaps there will be another round.

Senator SIMPSON. There will, there will. I never hit the gavel when it is yellow, but when it is red, we have a tendency to—

Senator LEAHY. At least you have mellowed, Mr. Chairman. You are no longer hitting the members with the gavel, like you used to.

Senator SIMPSON. This is true, but when you used to come in and there was a camera, it looked like two brilliant suns on the screen. [Laughter.]

Senator LEAHY. This is the only committee with matched foreheads. [Laughter.]

Senator SIMPSON. Do you want to tell them the story now?

Senator LEAHY. No. [Laughter.]

I have been trying to live that down for a decade, Alan.

Senator SIMPSON. OK.

Attorney General RENO. Senator, may I just add one point to Senator Feinstein's concern?

Senator SIMPSON. Yes.

Attorney General RENO. The Imperial Beach sector was there the greatest number of illegal crossings occurred in the San Diego sector. That is down 41 percent. The other sectors are up, but overall the San Diego sector apprehensions are down, and so I think there is a real significant effort underway.

We look forward to working with you again to show you how we are controlling illegal immigration in that sector and the steps that we are taking, and we will work with you in terms of addressing in an orderly way the impact of immigration on California and on other States, but it comes down to, as you pointed out, a real dollar issue.

Senator FEINSTEIN. Mr. Chairman, I am sorry, but I think there is some confusion. I understand that, but what I am saying is that overall the numbers are way up. See, there are more people coming across now, if I look at the numbers and interpret them correctly.

Attorney General RENO. We will get the figures for—

Senator FEINSTEIN. I understand that one sector is down, but overall gross numbers are up, and I have the actual numbers of apprehensions.

Attorney General RENO. We will get the figures for you, Senator, and work with you on it.

Senator FEINSTEIN. All right, thank you.

Senator SIMPSON. Senator DeWine, it is nice to have you as a member of the Judiciary Committee. You add a great deal.

Senator DEWINE. Thank you, Mr. Chairman.

Good morning, Attorney General. We appreciate your joining us today. As you are aware, there have been serious discussions in this country's bill introduced, et cetera, in regard to not just illegal immigration, but the whole question about legal immigration into the country. I wonder if you could tell us what the position of the administration is on this issue.

Attorney General RENO. My understanding is that the Jordan Commission will be making a report on that very issue in September, and we are looking forward to reviewing that report and considering the commission's recommendations in developing an approach to that issue.

Senator DEWINE. So at this point the administration does not really have a position, other than waiting for that report?

Attorney General RENO. We look forward to seeing the Jordan Commission's report on this issue.

Senator DEWINE. Could you tell us how the administration's plan for employer verification is different, if it is different, from Senator Simpson's bill, and also from the Jordan Commission report?

Attorney General RENO. There was at first, I think, a misunderstanding about the Jordan Commission. She wrote me herself—we will just deal with that—saying, "The commission agrees completely with you in your assessment that we have got concern about documents and how we provide for tamper-proof documents. It is the principal reason that the commission is recommending an approach that does not depend on a single document, and indeed does not depend on documents at all."

We have had the opportunity to meet with her. We are developing four pilot projects trying to, first of all, improve our telephone verification system from 900 to 200 this year, and to 1,000 by the end of 1996, which would permit employers with certain documents to call in. We are working with the Social Security Administration to see how we might deal with that issue as well. There are a number of things that we are undertaking.

My understanding is that Senator Simpson's bill requires that we have a system in place within 8 years. What we plan to do is, with these pilots that we have designed with the Jordan Commission in mind, report back to you in 3 years what we have been able to develop in terms of a sound, tamper-proof, reliable, accurate, and fair system, and have it in place within, I think, as I understand it—and I would ask Senator Simpson to clarify it if he disagrees, but depending on what we found, I would anticipate, with modern technology, that we could achieve that goal.

I will tell you this from my experience as a prosecutor in Dade County. Finding something that is tamper-proof is one of the most difficult tasks that we have, and I think it is going to require every bit of technology that we can develop to do that.

Senator DEWINE. Just to summarize, without getting into all of the details, and I appreciate what you have said, you don't find anything inconsistent. You think you are consistent with what the Jordan Commission has been talking about, what their thrust has been, and what Senator Simpson's bill proposes.

Attorney General RENO. I would ask Commissioner Meissner to confirm with me, but from all of my study on the subject, I think we are all going in the same direction.

Senator DEWINE. Thank you, Mr. Chairman.

Senator SIMPSON. I would just add, Mike, that we are giving them all the time in my bill that they need to do pilots, being flexible on time, and so on, but the implementing period will be 8 years, for certain.

Senator Leahy.

Senator LEAHY. Thank you, Mr. Chairman.

Attorney General, I want to commend you and the staff of the eastern region of the INS for the fine work being done. I look at some of the things that have been done in the INS. The Law Enforcement Support Center—I have watched the work of Bill Griffin and his staff and I believe they are doing a great deal.

I met with a young man named David Messier from INS the other day. He has developed a state-of-the-art technology for an INS intelligence computer-aided detection system for use at our borders. He did this at his own home on his own time. It has got verbal warning, artificial intelligence. It is really a pretty fascinating thing. This young fellow just started tinkering around and put it together. It has been endorsed as a national standard. I think he has been commended by Computer Week magazine and the INS. I think he is typical of a lot of people I have met in the INS in showing this kind of foresight and innovation.

The extraordinary work of the director and her staff of the eastern region—I think that they have done a lot toward improved service and law enforcement and morale. In fact, I believe in 1992 an INS task force rated the eastern region as the highest among the regions, and in 1993 the finance operation in South Burlington, VT, was recognized by the Department of the Treasury with a Vanguard Award.

I say all this to lead up to a real concern I have that a lot of this progress and this good work and this effective team may well be shunted aside by top-down bureaucratic reorganization. I mentioned to you yesterday when we were on the phone my concerns about this, and Commissioner Meissner was good enough to come by and see me yesterday. We had a long talk about it.

Basically, what I said to her and I will say to you is that my phones have been ringing off the hook on this. I probably shouldn't say this in such a large gathering. I am one of the few Senators who has a listed home phone number both in my home State and down here.

Senator SIMPSON. Yes.

Senator LEAHY. You can tell in the smaller States we are used to this.

Senator SIMPSON. Yes.

Senator LEAHY. But those phones have been ringing off the hook. My Internet e-mail address has been getting filled up with this, and I get stopped on the street at home when I am there on the weekends by people who tell me that they feel they have had their teeth kicked in by the announcement of the so-called Centers of Excellence plan for reorganizing the administrative support system of the INS. They feel they have been told, look, you guys might be doing a great job here, but tough, we are going to reorganize. Now, I know it has been said that they were consulted. If the amount of consultation I got is an example, they were not.

I would ask you this, Attorney General. Has the Department of Justice signed off on the so-called Centers of Excellence plan for re-organizing administrative services within the Immigration and Naturalization Service?

Attorney General RENO. First of all, what I would say to you is whenever I go to another part of the country I try to visit with people who are on the front lines. I have sat in an asylum hearing in San Francisco. I have been to the smallest Border Patrol offices. I go in there and I say, if you were the Attorney General of the United States, what would you do to improve your job? I am trying to listen, I am trying to hear, and I have heard great ideas.

There are many other people all through the Immigration and Naturalization Service who are doing wonderful and creative things. I think Commissioner Meissner is doing a wonderful job of trying to make sure that they are heard, but changing the whole approach of an agency that was top-down is difficult, and strengthening the lines of communication across the country is, I think, one of her great challenges and I admire what she is trying to do in that whole undertaking.

I know that you have spoken with her, and we will continue to work with you and your staff to make sure the valid concerns that you have raised are heard. Currently, INS is managing its administrative functions primarily through a network of five offices, all performing essentially the same functions. This proposal, this Centers for Excellence, would eliminate the inconsistency and duplication throughout the Service.

Senator LEAHY. But have you signed off on it? I mean, is this done?

Attorney General RENO. I understand it is underway, but in all of these issues we will work with you; we will address it. INS personnel met with Vermont employees yesterday. We do not intend for any employee whose functions are being changed to be without a job and we will be outlining various steps to accomplish his.

What I am dedicated to trying to do in everything that I approach through the Department of Justice is do it the right way, but at the same time address the concerns of people who have been loyal to the agency, loyal to the Department, and make sure that we do everything we can to make sure that their qualifications and capacities are still available to the Service.

I would ask Commissioner Meissner—

Senator LEAHY. Well, I am not sure I understand the answer.

Attorney General RENO. Senator, the answer is if there needs to be a change, we will make a change, but I at this point don't have any information that indicates that there needs to be a change.

Senator LEAHY. So at this point, it has been signed off on, absent evidence that it should be changed?

Attorney General RENO. Everything I approach in the Department of Justice says I can be wrong. You know, we may be able to do it differently, and I don't like to get stuck in saying we are going to do it absolutely this way. If somebody comes to me—and I have already done it with a number of things, as Doris can tell you, in Immigration and Naturalization—and says, look, this is the better way to do it, I am going to sit down with Doris, sit down

with the people concerned, and try to make sure we do it the better way.

If they come to me and say, look, we are worried about our jobs, I say, fine, let's do it the better way and let's address how we can use your tremendous resources and what you have to offer the Immigration and Naturalization Service in some other way.

Ms. MEISSNER. Let me just add to that that this is, as I told you, Senator, a situation where we have briefed the Deputy Attorney General and the Attorney General on this. There has not been a formal signoff. We didn't ask for a formal signoff. We simply have advised them of the proposal.

The proposal, as I told you, is our draft plan for the way that we think it is best to proceed, and that is what is being discussed with our field staff this week. Again, if we get feedback that alerts us to areas that can be better done than what we have proposed, we are prepared to make adjustments. This has not been submitted to OMB, which is where the formal signoff would occur.

Senator LEAHY. My time is up, but on the next round I am going to want to go back, Mr. Chairman, because I don't feel that my question has been answered.

Attorney General RENO. Senator, I have heard you loud and clear, and you have my telephone number. I have already made a note, "Senator Leahy's issue," and I am going to follow up on it.

Senator LEAHY. OK. Maybe that is better. Thank you.

Senator SIMPSON. Let me just set out a little procedure. I think all of us who are here had—and I am going to limit it to those who are here right now. We will have another round, so we will finish here at about 11:40, and I want Governor Chiles to know that, that we will be ready to have him here at about 11:40, and then we will conclude the morning panel. If we go a little over 12:30, that is fine, so that all can be accommodated.

So, with that, let me proceed with my final round of 5 minutes, and if you could stay closely to that when the red light hits, we could conclude. Of course, your questions can be put in the record, obviously.

Recognizing that effective reform must both address the backlog and meet the new cases, what assurances do you promise or give us that you can provide to us that our administrative and judicial resources are really adequate to the task?

Based upon your understanding of the number of criminal and other illegal aliens added each year, will these fiscal year 1996 goals of removing, now, you say 28,000 criminals, instead of 13,500, and deporting over 110,000 illegal aliens, mean that we actually will gain some ground here?

Attorney General RENO. I am trying to gain ground in every way I can, whether it be in terms of controlling the crossings along the border, in terms of apprehending those that come across the border, and in terms of deterring others. But it is important not only that we focus on the front door, but that we focus on the back door in terms of this effort.

I think if we combine a coordinated effort focusing on the front door with illegal immigration and coming in the back door and taking these people out, focusing on worksite enforcement in a combined, coordinated effort, we will make headway.

Senator SIMPSON. We are looking for a net gain here, and we will be looking at that closely with oversight to see that that is actually done and I know that you will work with us.

This is rather minor, but it is typical of—

Attorney General RENO. If you are looking at a net gain in terms of there were 112,000 less, I can't tell you who is going to be committing crime. I am trying my level best on the violence side, too, to control violence and to reduce violence. So if you are talking about a net gain, I would be happy to address that with you in terms of our violent crime initiatives, but this is the number we think we can deport. Whether it would be net is subject to other variables.

Senator SIMPSON. I will visit with you on that.

Last year, you remember we passed the immigration technical corrections bill and we directed you to, quote, "provide special consideration," unquote, for longtime elderly immigrants who must take the civics portion of the naturalization exam.

We specifically changed the original House language in that bill which would have exempted such immigrants from this exam entirely. But in February the INS sent a cable which did precisely that—just what the House had originally suggested and we rejected—and which was rejected in conference; The cable exempted these people entirely from any testing whatsoever on their knowledge of the history of our country.

Why would we want to admit persons into the body politic of this country who may have no appreciation of our history and political system? Certainly, there is some minimal acquaintance with our civic structure which they can learn in their own language. We don't want to be punitive in that area for those over 65, or elderly, as they say.

What explanation can you provide to this committee for this disregard of congressional intent and when we might expect to see that corrected?

Ms. MEISSNER. I will answer that question, if I could, Senator. We are preparing a regulation right now which we intend to be publishing on the first of May which defines the criteria for special consideration as it was laid out or determined in the statute, and the way that we are writing that regulation is that for the civics and history requirement that elderly applicants would have to meet, we would be confining the list of questions that generally people study in order to pass the exam. We would be confining that list of questions to a smaller number than is the case for regular applicants.

The cable that you are referring to, I am afraid I am unfamiliar with, so I will have to check on that for you. But what I want to assure you of is that we will indeed be dealing with special consideration by continuing to do a testing procedure, but it will be a limited field of questions.

Senator SIMPSON. Well, I think certainly we can have special consideration long-term persons, 20 years here, 65 years old, in the civics portion of the naturalization exams. But I don't know why any of us would want to see them exempted from a knowledge of our U.S. history and our Government.

The cable is February 6th from the Interpreter Releases and it says that the change exempts them from being tested on U.S. history and Government knowledge in the same manner as they are now exempt regarding the English test. Thus, they are exempt from all testing, and I can assure you that is not the intent of Congress.

Ms. MEISSNER. I understand that.

Senator SIMPSON. So someone is writing those things, Doris. You will find them; I know that you will. [Laughter.]

We know how that works. They may be in this room. The color drained from their faces. [Laughter.]

And it will be important that it does continue to drain, yes. [Laughter.]

Now, where were we? I will cease and I will submit the balance of my questions to the Attorney General and to Ms. Meissner.

[The questions of Senator Simpson and responses will be found in the appendix.]

Senator SIMPSON. Senator Simon.

Senator SIMON. In that connection, let me just add that if—and I am judging now by our situation in Illinois—if some greater assistance can be given in this naturalization process by INS, I think that would be helpful. I just pass that along as a comment.

I know that you are going to be getting the report in September on the whole question of legal immigration, but what about the abuse that clearly is taking place where sponsors are bringing people in, particularly older people, and they are sponsors for a short time, responsible for a short time, and then people then become wards of the State and Federal Government? What is your reaction to making sponsors more responsible for a longer period of time for people who are brought in?

Attorney General RENO. Well, first of all, I think we have got to address the issue of enforcement of the sponsorships. I believe Senator Simpson addresses that in his legislation. We support that, but believe it should be addressed in the welfare reform legislation. I am not an expert on all those issues, but we would look forward to working with you and Secretary Shalala in that effort.

Senator SIMON. I am for taking every sensible step we can to stop illegal immigration. I have to say I am concerned with proposals that ask our schools and teachers to find out from children whether they are here illegally or legally, and I would be interested in the response of either of you to steps in that direction.

I might say by way of background, people who come here legally are frequently massively confused by the complex system of government we have, and to frighten some of those parents or children is not in anyone's best interest, nor is it in anyone's interest, for those who are here illegally, just to have their children not go to school.

Attorney General RENO. I think we have made clear, and I have made clear from the beginning, the worst single thing you can do with a child is to deprive them of an education if you are trying to correct the situation in communities of America, and what we need teachers to have the time to do is to teach and not be engaged in the issue of verification of immigration status. I think we would share your concern.

Senator SIMON. Then, finally, I mentioned the adoption problem. That has become a problem where the statutory definition—and I am quoting, "the sole parent of an illegitimate child" definition—now means you have to get both biological parents' consent, when frequently it is clear that the father has just abandoned a child.

Any comments by either of you on possible modification of the law here?

Ms. MEISSNER. We agree with you, Senator, on that point and we have actually written legislative language that we will be submitting in a subsequent bill asking the Congress to alter that.

Senator SIMON. Good. I thank you. Thank you, Mr. Chairman.

Senator SIMPSON. I will work with you on that, too, Paul. I think it is matter of interpretation internationally, the words "illegitimate" and "out of wedlock," and I think we can get that one corrected.

Senator Kyl.

Senator KYL. Thank you, Mr. Chairman. I have a question for the Commissioner and then a question for the Attorney General.

Senator SIMPSON. The Commissioner will be back.

Senator KYL. Yes; unfortunately, I won't.

Senator SIMPSON. Go right ahead; anything you wish.

Senator KYL. I am sorry.

Senator SIMPSON. Do it any way you wish.

Senator KYL. Let me begin by noting that we had a very productive meeting in our office. The Attorney General referred to it. Both the Commissioner and the Attorney General were there, and we got a lot of the things cleared up that related to the concerns that I had expressed regarding the Arizona situation.

One of the things that I recall from that was that there were about 85 agents that would be left over; that is to say, not already permanently assigned to some of the locations in the graduating class soon. I had the understanding that those 85, at least for a while, would be available to, in whole or in part, be plugged into certain situations, as the case may be.

Am I incorrect in that, that actually they are going to be permanently assigned fairly soon to some site and therefore would not be able to be used as trouble-shooters somewhere else?

Ms. MEISSNER. Well, the Tucson sector is receiving about 85 new agents—I think it is actually 83—and they are arriving in March and in April. They are assigned to the sector, and they are permanently assigned to the sector. They will be utilized in whatever way the chief thinks is best.

Senator KYL. I understand that. I thought there were—and it is actually more than 85; it is about 93 or so. But I thought there were about 85 left over in the whole class. Attorney General, are you aware of that?

Attorney General RENO. Here is the situation. As I described to you, you have got attrition, and we need to fill those classes. We hope to bring on 1,000 new Border Patrol agents in the class. That will mean, with the attrition in classes, we can graduate about 800-and-something, and we are going to try to get those back to the border.

We will have to make determinations with respect to attrition as to who has been impacted most, but we are going to try to do ev-

erything we can. As I explained to you, I am engaged in trying to do everything I can to recruit as fast as we can and train the right way, consistent with bringing people on in an orderly way.

I think, Mr. Chairman—and I would like to make this point because people talk about adding a significant number of agents. I have asked the Immigration and Naturalization Service and the Border Patrol to talk with experts in the area—the Police Executive Research Foundation, the FBI, others who understand what happens to a police department or to a law enforcement agency if you bring on too many people too fast. We would like to work with you in sharing that information and ensuring that we do not flag in our determination to get that Border Patrol fully staffed, but that we do it the right way consistent with proper training and pushing it as hard as we can.

But even if we pushed and contracted it out and got training done and got it done the right way, there reaches a point where you can't, according to the experts, bring on more than 30 percent new people, or otherwise you undermine the whole supervisory structure of the law enforcement agency.

Senator KYL. All of that is greatly appreciated. There is no group of 85 agents out there that could be used to plug different holes at different times, then. Am I correct on that?

Attorney General RENO. You have got the 700 new, but what I want to point out to you is you add 700 new; you also have attrition, and we have got to address the attrition area as well. We are striving to get to that 85 so that we will have the flexibility, but in whatever case we are going to have the flexibility to move as we did in Nogales and to have an impact where we are seeing a significant increase.

Senator KYL. OK. A final point—and I will address a letter to you on the subject to provide the details. You probably will not remember this, and I wouldn't expect you to necessarily, but this means enough to me that I wanted to put it on the record with everyone here.

In 1989, a Phoenix police officer, Kenneth Collings, was shot and killed by a Mexican national who was robbing a bank at the time. There were two Mexican nationals involved. One of them was apprehended and tried and convicted. The other escaped to Mexico.

The Phoenix Law Enforcement Association met with President Clinton and he referred them to you. This was in 1993, and at least one of the officials of the Phoenix Law Enforcement Association did meet with you about that, Attorney General, with the question of what the Justice Department could do to help bring that person to trial in the United States, to bring that person back to the United States for trial.

They have not heard anything from anyone in the administration and would very much like to bring this case to conclusion. They have promised the family of the police officer that they would try to do this, and it would mean a great deal to me, and I know to the Law Enforcement Association, the police officers, and certainly to the family, if that could be done. Again, I don't expect you to know this case off the top of your head, but I wanted to put it on the record because it is very important. I will get the details to you and we would sure like to get some help on it.

Attorney General RENO. I have a specific recollection of a meeting, whether it was this case or not, because we have had a number of cases where law enforcement has called to our attention somebody who has fled across the border. We have tried to track these, and I don't have any late information on this, if this was the case that I remember, but we will check it as soon as I get back to the office.

Senator KYL. I certainly would appreciate that and, again, thank both of you for your testimony this morning.

Thank you, Mr. Chairman.

Senator SIMPSON. Thank you, Senator Kyl.

Senator Feinstein.

Senator FEINSTEIN. Thank you, Mr. Chairman.

Madam Attorney General, is there any improvement in cooperation from the Mexican Government on controlling the border or deterring the transportation of cocaine into this country?

Attorney General RENO. In early December, before the peso crisis, I met with the new attorney general of Mexico and with the Minister of Government in Mexico City. I explained the concerns that we had had. I suggested efforts that we could undertake to form a working relationship and what could be done both in the area of drug enforcement and in the area of immigration and migration issues.

I was very heartened. I take everything a step at a time. I hear something and then I would like to see action to follow through. There has been a definite follow-through. We had already undertaken with the DEA and the FBI a far more coordinated effort along the border. We have been reaching out to Customs. I can't go into the investigative details, but I feel very heartened about what we are doing.

We are now able to reach out and have had some very successful meetings with the Mexican Government on the issue of drug enforcement. I would ask Commissioner Meissner to describe to you her meeting that she had on this issue that I think was very heartening and the steps that she has seen undertaken.

Ms. MEISSNER. We met for the first time with the representatives of the Zedillo government on migration issues in mid-February and we came to an agreement, a joint communique, which I will make available to you if you don't already have it. It has a variety of things in it, but the very specific points that were crucial to us where law enforcement is concerned had to do with, first of all, Grupo Beta, the expansion of Grupo Beta. The Mexican Government has reorganized Grupo Beta in Tijuana; it has appointed new leadership to it. It has brought additional resources and some different structure into the Grupo Beta that exists in Sonora.

It will double Grupo Beta this year on the southern border. They are presently in discussion with governors and mayors of several other locations. We have made our views clear on what locations we think are the most important for them to proceed with Grupo Beta, and they will be advising us before June of those next locations.

Second, the Mexicans have agreed to deal with the Nogales tunnel situation on the Nogales in a very specific way, and indeed it has already happened. I don't know how familiar you are with that,

but these are these sewage drain tunnels and they have been very dangerous. They have now permanently stationed enforcement personnel on their side at the entrances to all of those tunnels. I believe there are five entrances, and they will be preventing anybody from entering them and also constructing permanent grates to close them off as soon as the construction can be put into place.

They have, third, dealt, and are dealing with the issue of lane runners and port runners. That issue has been very important, as you know, in California. They deal with that from the standpoint of safety for bridges and crossings, and they have agreed to break up the massing of aliens on their side which results in the lane runners. Finally, they have agreed to work out procedures with us for interior repatriation, for repatriating repeat crossers from the San Diego border area into Mexico.

Those specific steps are being monitored on a regular basis through our embassy in Mexico. I just met with the Mexican ambassador here on Monday, as a matter of fact, going over the monitoring of those initiatives. So we think that we are seeing action and an attitude that we have not seen before.

I guess I would say finally that more generally this is the first time—and I have worked with the Mexicans on this issue for more than 20 years and participated in these talks. This is the first time that I have heard Mexican officials openly discuss their responsibility as a country to provide jobs and opportunity for their own people, and they have talked in some detail about programs that they are wanting to put into place to that end. That is particularly difficult for them now with the austerity constraints that are upon them, but the attitude change, I think, is significant and notable.

Senator FEINSTEIN. Well, that is very heartening to hear. I hope it continues because I think that can be a big help in the long run in solving the problem, so that is very good news.

If I may, let me just go to employer sanctions and verification. Oh, dear, I am not going to have the time, but California, as you know, has 750,000 employers.

Senator SIMPSON. Go ahead.

Senator LEAHY. Take a minute off my time.

Senator SIMPSON. Under the wire.

Senator LEAHY. Take it off my time.

Senator FEINSTEIN. I am trying to watch that red light and behave.

Senator SIMPSON. You are doing quite well; better every time. So one quick question because we have Governor Chiles there.

Senator FEINSTEIN. Well, quickly, let's just go to this Houston Post article of Sunday on the subject of the 2 million nonwork Social Security cards which are being used for work. The article says that INS has not, despite several years, developed the capacity to access the data which the Social Security Administration has provided. Now, this is a significant gap. Can you address this, Attorney General?

Attorney General RENO. Yes. There is a long history where Social Security provided the information. INS couldn't use it, and one of the first things that Commissioner Meissner addressed when she took office, when she started educating me about immigration is-

sues, was the need to develop an understanding of how the Social Security Administration and INS can work together.

One of the pilots that we will institute with the fiscal year budget is an effort, and we are already underway, trying to understand how INS and the Social Security Administration can link their data together in a cost-effective way. We may find that it is not cost-effective, but we are going to explore all these avenues in this 3-year period that we propose for the four pilots.

Senator FEINSTEIN. Thank you very much. Thanks, Mr. Chairman.

Senator SIMPSON. Yes, indeed, Senator Feinstein.

Now, out of chute No. 6, the Senator from Vermont for a final round.

Senator LEAHY. Thank you, Mr. Chairman. We are not going to have another round?

Senator SIMPSON. No; this is it.

Senator LEAHY. Please understand, both you, Attorney General, and the Commissioner, my earlier questions. I am not opposed to anything that is going to improve INS or save taxpayers money, nor are my interests wholly parochial. Senator Lugar and I wrote the so-called Leahy-Lugar bill which cut \$5 billion out of the Department of Agriculture, did some necessary reorganization there, and closed a lot of offices in Vermont and in Indiana; I might say in Wyoming and California, for that matter. So, that, I am not opposed to reorganizing, provided you get something better in return.

I am wondering, though, with all the important programs that make up the INS mission, including a number that you are either expanding or changing, is this an appropriate time to be simultaneously reorganizing the administrative services.

Attorney General RENO. One of the confusions in the whole area of administrative services is I will say, why can't we do this in this region? Well, it would be another sector and they do it differently. One of the most difficult transitions for me is to go from a community of 1,800,000 to a nation of many millions and not be as able to be—not have the physical capacity or the hours in the day to be in touch with everything that is going on within an agency of 95,000.

We want to work with you on this. I have made a note and we will follow up with you to do everything that we can. It has been very important for me—Senator, all three of you have been able to call me after listening to constituents at home and say, Janet, would you follow up on this, and it is so important that we hear this and understand it, and we are going to do our level best to follow up and I will get back to you.

Senator LEAHY. In that regard, I will submit for the record, if I might, Mr. Chairman, questions regarding the breakdown in costs and personnel, and so on, but also a question on whether the Department has plans for cross-servicing other aspects or functions of the Department through these "Centers of Excellence." I would suggest that with regard to these questions, if there is any ambiguity in them, please feel free to call me directly.

My concern is not only what we end up with. I don't want to break something if it is working well—the old saying is don't fix it if it is not broke. But I am also concerned on behalf of people

in my own State who do have the impression that they are being told, look, we are here to implement this plan and we are going to tell you what it is and we are going to implement it; by the way, does anybody have any ideas about it?

I understand from your testimony that that is not what is intended, and I understand from the Commissioner's conversation with me last night that that is not what is intended. I want to make sure that somewhere we clear the air on this, and I do appreciate your availability, Attorney General, from the time we first talked about some of our mutual mentors, from Dick Gerstein and Sy Gelber and others, on through. You have always been available.

So if you and your staff, both of you, could take a look at the questions I am submitting for the record, maybe we should chat more about this.

Attorney General RENO. Thank you, sir.

Senator LEAHY. Thank you. Thank you, Mr. Chairman.

[The questions of Senator Leahy and responses will be found in the appendix.]

Senator SIMPSON. Thanks to all of you, and to you, Attorney General Reno. You have been very helpful. You have been very generous with your time here this morning. I really appreciate that. Janet, I will continue to do as I have, and, Doris, both of you—we know each other; we have worked together. We have a lot to do here and I think it is very important.

I know where you are going, but I never quite know where the White House is going. Ironically, I never cared when I was doing immigration work before, so I am really not going to pay much attention to them any more than I did to Reagan or Bush or anybody else; there are three branches of Government. I am certainly going to count on you, however, and if the White House is going to become involved, they should be more adeptly involved, especially in dealing with Barbara Jordan and her Commission and her activities. You were receptive and you understood; they did not.

I expect to visit with you many times, especially when we get to the issue of verification. That issue is the one, again, that can give us the most trouble. It is vitally important, and I want to say now we will devote an entire hearing and a consultation there solely on that issue of the verification procedures. We failed once when we knew better and I intend to do my utmost to see that it doesn't happen again.

Thank you very much. We look forward to working with you.

Attorney General RENO. Thank you.

[The prepared statement of Attorney General Reno follows:]

#### PREPARED STATEMENT OF JANET RENO

*Introduction.*—Thank you for the opportunity to appear before you today to address your theme of "Proposals to Reduce Illegal Immigration and to Control Financial Costs to Taxpayers." Both reducing illegal immigration and controlling costs to the American public are priorities of this Administration, and we are tackling both with our new legislative, budgetary, and administration initiatives. This comprehensive strategy is helping us win the fight against illegal immigration and address taxpayer costs.

*Overview.*—The Administration's strategy to fight illegal immigration includes four prongs: (1) regaining control of our borders; (2) aggressively pursuing criminal aliens; (3) expanding worksite enforcement to remove the job magnet and deport illegal workers and (4) providing the Immigration and Naturalization Service with

the resources it needs to be effective. When I appeared before this Committee last June, I described these initiatives, and now I would like to give you a brief update on our progress and future plans.

Our efforts this year are primarily, but not exclusively, directed at the four states along the Southwest border—California, Arizona, New Mexico and Texas—where half of all illegal entries occur. The remaining new resources from our FY 95 budget are going to four other states—Florida, Illinois, New Jersey and New York—to fund infrastructure and automation improvements and enable INS to hire new investigators, inspectors and asylum adjudicators. Since almost 80% of the country's undocumented immigrants live in these eight states, we must focus our resources on those areas.

*Regaining Border Control.*—Although we are working diligently, effective enforcement of our borders cannot be achieved overnight. However, we are beginning to see signs of success. Operation Hold-the-Line now has been in place for 20 months in El Paso, and apprehensions have plummeted by 73% from this time last year. The number of people attempting illegal entries at JFK airport in New York has dropped 48% in the same time period because of cooperative efforts with airlines, more detection space and our asylum reforms.

In addition, five months ago, we launched Operation Gatekeeper in San Diego, with the initial objective of deterring illegal crossers from the Imperial Beach area and shifting them to the east where the terrain gives the Border Patrol the advantage in preventing them from crossing. That strategy is beginning to work—during February, Imperial Beach apprehensions were down 41% from the same period last year. This effective deterrence has pushed some illegal immigrants, as designed by our strategy, to areas east of San Diego that are better suited for enforcement. As a result, apprehensions have been up in those areas.

Our next steps, therefore, include fortifying eastern portions of the San Diego sector with more agents. In fact, 46 new agents are graduating from the Border Patrol academy this month and will join the eastern El Cajon and Campo/Boulevard stations in the San Diego sector on March 17. In addition, 50 new recruits will begin training March 16 and return to San Diego after completing the 18-week course at the academy.

We have been monitoring closely the number of apprehensions and other indicators from the Southwest border as we continue to implement our border control strategy. Although it is too early to predict a permanent shift in traffic patterns, the most recent data indicate an increase in traffic across the Arizona border.

In anticipation of such an increase, we launched Operation Safeguard, which will add 100 Border Patrol agents to the Tucson sector by the end of this year and provide for new fencing, lighting, roads, and other construction to support border security. Last month, the President detailed 62 Border Patrol agents to Nogales to provide immediate assistance to the Tucson sector force.

To improve our effectiveness on the border, we must continue to increase the size of our Border Patrol. I am closely monitoring our progress in hiring new agents, so that we will keep on track with our plans to hire and train 700 more agents this fiscal year. During Fiscal Year 1994, we added 384 new agents (291 after factoring in attrition) to the line. In addition, 232 agents currently are in training at the Border Patrol academy. We expect to have, by the end of FY 1995, a total force of at least 4,792 agents, which represents a 51% increase in staffing since 1993. And in FY 96, we plan to add 700 more new agents to the force.

As the size of the Border Patrol grows, it is imperative that we have in place mechanisms to guard against human rights abuses. There is a danger that when law enforcement units expand too rapidly, training and professionalism may suffer. We have worked to avoid this consequence by not sacrificing training for the desire to add agents quickly.

In addition, I am very pleased that the Citizens' Advisory Panel will be having its first meeting next month. I established this panel to review civilian complaints of abuse filed against INS employees and the INS procedures for responding to such complaints.

This positive initiative will help verify the number of actual abuse incidents and support the Administration's goal of reducing the incidence of abuse along the border. The panel is comprised of a diverse group of 15 members, including private citizens, Department of Justice representatives, and an official of the Mexican government who serves on a nonvoting basis.

Nearly half of our new dollars this year—more than \$157 million—is being used for improved technology for all INS programs, including \$97 million for Border Patrol specific automation such as the case management and automated fingerprinting system INS is now piloting at the San Diego border and will bring to the Tucson sector by September. Just adding new agents to the border is not enough. We must

support those agents with the right mix of advanced technology, barriers, and equipment. During my January trip to the Southwest border, I saw that providing the agents with the support they need is helping them work more efficiently.

This year, we have been working with the Mexican Government to curb violence and crime along the Southwest border. On February 15, delegations from the United States and Mexico issued a joint communique in which Mexico stated it will take several concrete actions, including strengthening and expanding Grupo Beta, the special Mexican police forces which operate along the border in selected towns and cities. This successful law enforcement effort has curtailed criminal trafficking in migrants along the border as a result of its efforts to prevent violence against them.

Mexico also has agreed to deploy sufficient personnel and equipment to ensure the safe operation of border bridges and crossings, particularly in San Diego, Nogales, El Paso and Laredo. This effort will address the serious problem of lane and port runners (the darting across the borders by individuals or groups or last minute breaks through checkpoints by vehicles) that has arisen and increased in reaction to strengthened U.S. border enforcement.

In addition, Mexico agreed to close the remaining access to the flood tunnels in Nogales, Sonora, through which people entered Nogales, Arizona, illegally. Finally, Mexico agreed to work with the United States to delineate procedures for interior repatriation within Mexico of certain undocumented aliens, thereby returning people to their original starting point rather than leaving them nearer the border, far from home, where they may be more prone to repeat illegal entry attempts. These actions by Mexico represent significant progress in our efforts to ensure a border that is safe and functional.

*Removing Criminal and Other Illegal Aliens.*—We believe that if criminal aliens know that if they commit crimes in the United States, they will be prosecuted, sent to prison to pay for their offenses, and then promptly deported, they will think twice about coming here and breaking our laws. As a result, a vital part of our comprehensive strategy for reducing illegal immigration is to streamline deportation procedures and expand the Institutional Hearing Program (IHP).

The IHP is a cooperative effort between the INS, the Executive Office for Immigration Review (EOIR), and Federal and state correctional agencies to conduct deportation hearings for convicted criminal aliens while they are still serving their prison sentences. INS and EOIR are working to remove an increased number of criminal aliens through this program.

INS and EOIR are concentrating on improving the efficiency of the IHP in the five states that have the largest numbers of foreign-born prison inmates—California, Texas, Florida, New York, and Illinois. Beginning this year, INS plans to interview 30,000 foreign-born inmates annually to determine whether they are deportable.

During FY 94, INS deported approximately 4,000 aliens through the IHP. Our goal for this year is 6,200 deportations, and we plan to be able to deport 13,500 during FY 96.

We also have been working to expand the international prisoner transfer treaty program, which reduces taxpayer costs by saving incarceration expenses. Over 30 countries and nationalities now are parties to prisoner transfer treaties with the United States. Under those treaties, prisoners convicted of crimes in foreign countries may serve their sentences in their home nations. The offender's transfer is voluntary and is subject to the approval of both the sending and receiving countries. Currently, 35 States have laws that enable them to enter into proceedings to allow a foreign prisoner to return home.

In FY 94, we transferred 424 prisoners abroad, including 373 to Mexico—the largest number of prisoners ever to be voluntarily returned to the custody of the Mexican government. This year we estimate that we will transfer 500 prisoners back to their home countries.

By FY 96, INS plans to triple its deportations of all illegal aliens from 37,000 in 1993 to 110,000. We will double the number of deportations of criminal aliens next year alone.

*Expanding Worksite Enforcement.*—Deterring illegal immigration must occur not only at the border, but also through worksite enforcement, since most illegal immigrants come to the United States to work. Our FY 96 budget request contains funding for 365 new INS investigations personnel and 202 new Department of Labor Wage and Hour and other personnel to enhance worksite enforcement. As a result, INS investigative staff will increase a dramatic 85% increase over 1993 levels.

We plan to focus the enhanced enforcement efforts on "targeted deterrence zones," which will be in the 7 states with the largest number of illegal immigrants—California, Texas, Arizona, New Jersey, New York, Florida, and Illinois—and will concentrate on selected industries that have historically attracted illegal workers. We

expect apprehensions of illegal aliens at worksites to increase by more than 60% in FY 96.

INS's increased worksite enforcement is already underway. Just two weeks ago, INS arrested 125 persons at a beef processing plant in Nebraska who had been working without employment authorization.

In addition, we are working to streamline the employment authorization verification system and make work authorization documents more fraud-resistant. A system that does not allow illegal aliens to fool employers with fraudulent documents will do much to aid in the fight against illegal immigration. We also believe that a streamlined system would more effectively guard against discrimination against lawful workers than the present system.

Because we do not yet know what the best form of such a new system will be, we are moving forward cautiously with carefully tailored verification pilots, as recommended by the Jordan Commission. We are committed to developing the most cost-effective, fraud-resistant and non-discriminatory method possible for verifying work authorization.

*Assistance to States.*—However, at the same time as we are working to reduce illegal immigration, we are committed to assisting the states with the costs of illegal immigration that are a result of failed enforcement policies we inherited from the past. The FY 1996 budget request includes \$850 million in assistance to states to offset costs associated with illegal immigrants—an increase of \$383 million over FY 1995.

We are proposing \$300 million for the State Criminal Alien Assistance Program (SCAAP), which received \$130 million this fiscal year. This Administration is the first to seek funding from Congress to reimburse states for a share of the costs of incarcerating criminal aliens.

The President's FY 1996 budget also includes \$150 million for discretionary grants to help states with a large number of undocumented migrants pay for emergency medical services under the Medicaid program. In addition, the budget includes \$100 million for the Department of Education's Immigrant Education Program, which provides grants to school districts with large numbers of newly-arrived immigrant students—an increase of \$50 million over 1995. Finally, we are seeking \$3 million to expand the INS Law Enforcement Support Center pilot project, which assists state and local law enforcement in determining the immigration status of serious felons or suspected aggravated felons.

*Legislative Initiatives.*—INS can do much to reduce illegal immigration, if it is given adequate funding. We greatly value your past and present support for the funding that is necessary to bring our immigration plan to fruition. In addition, the Administration is submitting to Congress a comprehensive legislative initiative to give us additional statutory tools for further implementation of our plan to reduce both illegal immigration and the resulting costs to taxpayers.

This legislation will aid with border control by:

Allowing aliens to be excluded from entering the United States during extraordinary immigration situations or when the aliens are arriving on board smuggling vessels. Persons with a credible fear of persecution in their countries of nationality would be allowed to enter the United States to apply for asylum.

Imposing new civil penalties of \$500 a day for failure to depart.

Amending the definitions provided in the RICO statute, 18 U.S.C. 1961(1), to authorize its use to pursue alien smuggling organizations; permitting INS, with judicial authorization, to intercept wire, electronic, and oral communications of persons involved in alien smuggling operations; and making subject to forfeiture all property, both real and personal, used or intended to be used to smuggle aliens.

Substantially increasing the criminal penalties for alien smuggling, illegal re-entry, and failure to depart.

The initiative will enable INS to remove an increased number of criminal and noncriminal aliens more quickly by:

Streamlining deportation and exclusion procedures, including appeals processes.

Authorizing Federal courts to require consent to the deportation of criminal aliens as a condition of their probation.

Permitting new sanctions to be imposed against countries that refuse to accept the deportation of their nationals from the United States. The legislation will allow the Secretary of State to refuse issuance of all visas to nationals of those countries. (Current law permits refusal to issue immigrant visas.)

Authorize INS to use volunteers to provide administrative assistance with criminal alien removal, as well as with naturalization and certain adjudications at ports-of-entry.

Finally, the legislation will help create effective worksite enforcement and work authorization verification by:

Authorizing a National Employment Verification Pilot Program to conduct tests of various means of verifying work authorization status in the most cost-effective, fraud-resistant and nondiscriminatory manner.

Reducing the number of documents that can be used for work authorization by citizens and noncitizens to 6.

Substantially increasing the criminal penalties for immigration document fraud.

Our legislative proposal, which Commissioner Meissner will describe in more detail, shares many of the key features of S. 269, the "Immigrant Control and Financial Responsibility Act of 1995," sponsored by Chairman Simpson.

I believe we can all agree that any legislation that moves forward this year should equip INS to fight illegal immigration as well as reduce the burden of illegal immigration on the states. I look forward to working with you, Chairman Simpson, and all members of the Committee over the next months as we seek to achieve our mutual goal of forging a legislative package with bipartisan support.

We have studied the recommendations made last September by the U.S. Commission on Immigration Reform and are working closely with Barbara Jordan and the other Commission members as we move forward with our initiatives. We anticipate reviewing the Commission's report on legal immigration scheduled to be completed this spring.

To echo the words of the Commission in its September report, "we believe that it is possible to reduce unlawful immigration in a manner that is consistent with our traditions, civil rights, and civil liberties." Keeping those words in mind will serve us well as we move forward.

*Conclusion.*—The President's FY 96 budget request will boost immigration funding for INS and four other Executive branch agencies by \$1.2 billion—a 93% increase since 1993. Nearly half of the increase, \$528.4 million, will bring INS total annual funding up to \$2.6 billion, enabling INS to more effectively carry out border control and other key immigration enforcement programs. However, this funding must be coupled with new statutory authorities for complete implementation of our comprehensive strategy to fight illegal immigration and control costs to taxpayers.

I am grateful for all of your interest in and support of the INS, our strategy to reduce illegal immigration, and our efforts to modernize the agency. Although we have accomplished a lot in the last two years, the demands that the INS faces still are unprecedented. I promised this Committee two years ago that I would tackle immigration as a serious priority, and I believe I am keeping that commitment. The challenge we face today is now to protect our Nation's proud immigrant heritage while at the same time controlling illegal immigration and the resulting costs to taxpayers. I look forward to working with this Committee as we attempt to meet that challenge together. Thank you.

Senator SIMPSON. Now, panel No. 3, Lawton Chiles. It is good to see you, my friend. I enjoyed you so when we worked together. Pat and I feel the same friendship. I don't know Dianne's relationship to you, but I can certainly say you and Rea were a great part of this Senate family and we worked together on a lot of stuff. I see your staff person there is the one that was here when you were here on immigration. I remember that. Your institutional memory is good. I see this morning in the paper you are up to your usual innovative activities and practices with regard to regulations in your State.

Anyway, it is a great pleasure to have you here, and since the ranking member, Ted, is not here, maybe Pat would have a swift word, if he wishes. He is certainly entitled to that.

Senator LEAHY. Only to echo what you said, Mr. Chairman. I have great admiration for Governor Chiles. He and I have been friends for over 20 years. I remember my very first meeting with him when I came here as a brand new Senator seeking his advice on committee assignments. I also was pleased to see the innovative plan that you have on getting rid of regulations that oftentimes are there for the sake of regulation. I couldn't concur with you more.

I think if you put good people into administrative programs, you ought to let them use their judgment. If they do a lousy job, fire them and put somebody else in. But if they are doing a good job, get out of their way. I will be interested in watching how it works.

I am delighted to have you here, Lawton.

Senator SIMPSON. If you would please proceed, Governor.

### **STATEMENT OF HON. LAWTON CHILES, GOVERNOR, STATE OF FLORIDA**

Governor CHILES. Mr. Chairman, I am delighted to be here. I am pleased to be here and much comforted being with friends. This committee has been a friend to me and the people of Florida for many years. Much of that friendship has been inspired by the committee's quest to understand and assist with the relationship of immigration and the problems of that to Florida and to the Nation. Over the decades, Mr. Chairman, you and Senator Kennedy and others on this committee have personally dedicated many hundreds of hours to try to wrestle with this problem.

Last August, I found myself again on the docks of the Coast Guard station in Key West. Daily, hundreds of Cuban families, many young men, small children, and mothers with babies, were cautiously walking off of Coast Guard cutters on to the shores of the United States. Most were rafters that were rescued out of waters that separate Cuba and Florida. It is only 90 miles. It was, as Yogi Berra would say, *deja vu all over again*.

This time, though, instead of hesitation while Castro continued to make and dictate our immigration policy, President Clinton and Attorney General Reno, with my encouragement, opted to take action and charge, interdicting the rafters and detaining them at Guantanamo. I think this action did change the course of roughly three decades of U.S. immigration policy, and I am confident it changed Florida's future in a positive way.

Cuban nationals would no longer receive preferential treatment and be granted unrestricted entry into the United States. Instead, the United Nations concept of a safe haven was adopted in order to place the would-be refugees from the country they fled out of harm's way, as well as out of the elements of the high seas. First and foremost, they were safe. That is of great importance to me. They were being detained to ensure that they were properly processed and received adequate health screening to protect the health, safety, and well-being of our Florida residents.

Florida could not endure another Mariel, when nearly 150,000 Cuban nationals landed on our shores. Some 15 years later, Florida is still struggling to overcome the burden that that placed on us. Our States and our local communities cannot shoulder the responsibility of uncontrolled immigration.

I know the Federal Government is now deliberating over whether to maintain Guantanamo or a similar site as a permanent safe haven for the Caribbean region, as well as others around the world. I would encourage this subcommittee to carefully analyze the concept of safe haven and how it could be used to influence immigration worldwide. I think the idea of safe havens and trying to get other countries to take a portion of those refugees is important. I would like to discuss other actions that could assist our policy.

Mr. Chairman, your bill complements the President's agenda, the Attorney General's efforts, and congressional support for additional resources and personnel for INS. I would say it is about time. I welcome this effort to make immigration a priority. INS has always been in my State the agency that was the furthest behind. They were virtually using the abacus, didn't have any computers. Everything was done on pieces of paper.

Please remember, it is not enough for us to just increase penalties; it is essential that we deliver the services necessary to enforce them. As we encourage and enhance employer sanctions, we have to give INS and Labor the resources, including the computerized system, to do that. I was delighted to hear your questioning and the testimony of the Attorney General in that regard.

You and I both know—and we tried once before to provide that there had to be a status to determine whether someone was eligible to work. If we cannot take away the magnet of a job, I don't think there are enough border agents, fences, dogs, or anything else that will help us control our borders as long as the inducement of the job is there.

The State of Florida has provided our personnel to help INS, so we are constantly supplementing their efforts as we try to do some things. Our INS district director in Miami is trying to squeeze every penny out of available resources, and I compliment them for the job that they are trying to do under great handicaps.

Our U.S. attorneys need additional resources now to prosecute the smugglers, the people that are making a fortune off of trying to bring these people in, and our U.S. attorney is trying to set an example by trying these cases and trying to go after the people, again, with great problems of resources to be able to do that.

Give INS the authority to squeeze and secure through forfeiture proceedings both the tools and the proceeds of crimes of smuggling. Many aliens use crafty and resourceful methods to enter this country and INS must have the discretion to be just as crafty and just as innovative. So I would urge the Congress to give INS the authority and the flexibility to carry out the mission of protecting our borders.

Your bill, Mr. Chairman, and the President's budget call for more dollars for enforcement, Border Patrol, and asylum officers. I know they are needed nationwide. I have to say that while Florida's borders are mostly sea, we see all the personnel going to the other States that have the land borders. We are constantly trying to see that we get a few of the additional personnel to come and help us. We have some additional asylum officers in our State. We need also enough enforcement officers for the other missions of the immigration law.

The State of Florida has taken the lead in helping to set up the Institutional Hearing Program. It is working well for us, and that is to speed up the process so that an illegal alien who is criminally in our jails—before they finish their sentence time, we already have the processing done. They can step from the jail to the bus to the airport, or wherever else they are going to go to be deported, and not be walking around.

We have sped that up in our State by starting to conditionally parole illegal aliens, and again with the help of INS, we deport

them and they go straight from the jail to the airport. We have been able to get rid of some 250 aliens to date. We probably have 1,500 to 2,000; these are nonviolent offenses that we can get rid of. That certainly saves us an awful lot of money.

Last April, we started that process. We have turned them over to the Federal Government, put them on a plane, a one-way ticket. So, that opens up one of our cells for one of our violent criminals when that happens. This action, we think, has saved Florida about \$10 million to date, and we know that we can go further than this.

In October, we orchestrated another project to extend the focus of our criminal alien deportation program from our prison system to the streets in four of our counties—Dade, Monroe, Broward, and Palm Beach. Now, from the time we arrest an illegal alien for a crime, with the efforts of INS, we are taking them not to the judicial system, but straight to the airport and deporting them. That certainly is a means of saving us additional money.

Mr. Chairman, the people of Florida are bearing a burden of more than \$1 billion a year for immigration to pay for health, education, and criminal justice. That is more than \$1 billion in State and local taxes that comes out of the pockets of Floridians. Our budget is around \$38, \$39 billion, so this is a sizable part of our budget, and that is why we are demanding immigration justice from the Federal Government.

Frankly, I am concerned that the cost that Florida's local and State government must pay to deal with immigration is going to get even larger if certain provisions being considered by the House are realized. I would hope that members seriously consider who will provide the health care and the education to thousands of legal aliens that are here if the Federal funds are restricted.

I am encouraged by recent action of the Congress and the administration to help lessen the burden of illegal immigration on the States. We have seen some much-needed support come from Washington through the help of the President and the Attorney General—\$130 million for criminal aliens for fiscal year 1995, the President's request of \$300 million for 1996, and the House crime bill authorizing \$650 million over 5 years—I would remind you that even while those numbers are encouraging, CBO estimated the total needed for 1 year is \$630 million—\$50 million for the Emergency Immigration Education Act for 1995, and the President's request for \$100 million for 1996.

We are grateful for \$101.6 million for the ongoing immigration emergency fund, but then we turn around and see the House has taken \$70 million of that in a rescission. So we have the fund and then it is taken away.

A new request by the President in his 1996 budget for \$150 million to reimburse the States for the cost of providing Medicaid emergency services to the undocumented—this again, Mr. Chairman, is one of the things we really are concerned about. We are given a Federal mandate that we must provide this service, but no funding for providing the service. This is one of the things I bear some responsibility for; it was in the Omnibus Budget Reconciliation Act of 1986.

Last December, the U.S. district court in Miami dismissed my immigration suit against the Federal Government. While acknowl-

edging that Florida was unfairly burdened by the Federal Government's policy, the court ruled the question was a political one and the issue is the privy of the Congress and the administration should not be decided by the courts.

Mr. Chairman, I am here because this is where the privy is, so to speak, between the Congress and the President, and I have to go to the privy and try to get some help which the court thus far has not seen fit to give me. I am appealing that decision, but I am also here to continue my battle on the other fronts.

Several years ago, I joined the other Governors of the largest States who are impacted by the burden of immigration and we are continuing to call for the Federal Government to reimburse us, to assist us in caring for the alien populations that we have to serve. We know there are a number of initiatives which could help the States. Expanding the IHP program to all States—that would help all of the States get aliens that are in their jails out of the country.

Put a comprehensive refugee resettlement program in place to resettle good, decent people in other countries, regions, or other States. Even with that program, in Florida our experience is 85 percent of the Cubans that arrive in the United States work their way back to Florida pretty quickly. This has to be taken into account.

Certainly, maintaining immigration as a priority issue for the country, making our refugee assistance programs more reflective of our U.S. refugee policy to make the levels of assistance correspond to the annual number of refugees that will be allowed entry—and limiting program eligibility for legal aliens is going to shift substantial costs back to our State under a lot of the provisions of the House bill.

I can't allow legal aliens, kids, to not go to my schools. To do so is to put them on my streets, and then I would have to put them in my prisons. So, that is a burden, and we have to give them health care because we can't allow them to walk around carrying communicable diseases.

We need to require INS to complete and formalize the mass immigration emergency plan and allow local law enforcement participation through a mutual aid agreement, and certainly again to strengthen INS resources in Florida.

Last, I would like to renew my call to give each alien a charge card, a Federal charge card, that identifies their status and charges their care to the Federal Government. In line with today's electronic transfer, aliens could use that card in our hospitals, our clinics, our schools, and our social service centers. It would be good only until their resident status is determined. That would be a major incentive to complete their processing and remove them from the Federal charge. Currently, there is no incentive. We in the States care for them while time lapses. Mr. Chairman, if the Federal Government got the bills, I guarantee you we would see some swifter results.

We have talked today about some of the successes. I come again, Mr. Chairman, to ask the subcommittee to help the Federal Government enforce U.S. immigration law. We need your continued leadership to assist the States in coping with the escalating immigration burden that is impacting our people. We have taken great

steps to build a partnership between the States and the Federal Government. We need to continue to build on that.

I again compliment you on the fact that you are ready to tackle this windmill again. I wish you Godspeed in that effort.

[The prepared statement of Governor Chiles follows:]

#### PREPARED STATEMENT OF GOVERNOR LAWTON CHILES

Good morning Mr. Chairman and members. I am very pleased to be here with the U.S. Senate Judiciary Committee. There is much comfort in being with friends. This Committee has been a friend to me and to the people of Florida for many years.

Much of this friendship has been inspired by this Subcommittee's quest to understand and assist with the relationship of immigration to Florida.

This subcommittee's leaders over the decades—especially Senator Simpson and Senator Kennedy—have personally dedicated many hours to visiting Florida and studying its immigration trends.

You know our history. We all recognize that lawful immigration has enriched our country in many ways. We must also recognize that illegal immigration is one of the most vexing problems that our country faces today. This is especially true in the State of Florida—a state with more than 12-hundred miles of open and virtually unprotected coastline. So, today I want to discuss Florida's future and immigration.

Last August, I stood once again on the docks of our Coast Guard station in Key West. Daily, hundreds of Cuban families—many young men, small children and mothers with babies—cautiously walked off of Coast Guard cutters onto the shores of America. Most were rafters rescued out of the waters that separate Cuba and Florida's shores—a mere 90 miles apart.

It was a scene that Florida has witnessed before. But the similarity soon ended.

Instead of hesitation while Castro continued to dictate our immigration policy, President Clinton and Attorney General Reno opted to take charge—interdicting the rafters and detaining them at Guantanamo.

This action changed the course of roughly three decades of U.S. immigration policy and most likely changed Florida's future.

Cuban Nationals would no longer receive preferential treatment and be granted unrestricted entry into the United States.

Instead, the U.N. concept of safe haven was adopted in order to place the would-be-refugees out of harms way—from the country they fled as well as the elements of nature on the high seas.

First and foremost, they were safe. And, of great importance to me, they were being detained to ensure that they were properly processed and received adequate health screening to protect the health, safety and well being of all Florida residents.

I did not want my State to endure another Mariel—when nearly 150-thousand Cuban Nationals landed on Florida's shores. Some 15 years later, Florida is still struggling to overcome the burden unfairly borne by our State.

Our State and certainly our local communities cannot shoulder the responsibility of uncontrolled immigration. I know the federal government is now deliberating over whether to maintain Guantanamo or a similar site as a permanent safe haven for the Caribbean region—as well as others around the world.

I would encourage this Subcommittee to carefully analyze the concept of safe havens and how they could be used to influence immigration trends worldwide.

I would like to discuss other options that could assist the U.S. in more effectively controlling immigration so that states like Florida are not left to fend for themselves.

Senator Simpson's immigration bill compliments the President's agenda, the Attorney General's efforts, and Congressional support for additional resources and personnel for the INS. I say it's about time.

I welcome this effort to make immigration a priority. Mr. Chairman and members of the Committee, please remember that it is not good enough to merely increase penalties. It is essential to deliver the goods to enforce them.

If you are going to enhance employer sanctions, gives INS and Labor the resources—including computerized systems—to do it. The burden should be on the federal government to verify a person's status, not the employer.

If you are going to enhance the penalties for illegal re-entry after deportation, give the INS the personnel to staff such operations.

The State of Florida has temporarily provided state personnel that the INS doesn't have in order to get criminal aliens processed and deported. It doesn't matter how tough the penalty is if there is no reasonable means to enforce it. The INS

District Director in Miami is trying to squeeze every penny out of available resources—but it is not enough.

If you want to throw the book at those who smuggle aliens into the U.S. for a profit, and those who provide fraudulent documentation to subvert state and federal law, make sure the U.S. Attorneys have the resources to prosecute. Go after them.

The U.S. Attorney in Miami is trying to set an example by prosecuting those smuggler who exploit desperate Haitians by taking their life savings for passage to Florida. Strong action will send a stiff message to those who prey on desperate people for financial gain as well as to the Haitians who might be tempted to buy entry.

Give INS the authority to seize and secure—through forfeiture proceedings—both the tools and the proceeds of those crimes.

Many aliens use crafty and resourceful methods to enter our country. The INS needs to have the discretion to be just as innovative. I urge the Congress to give INS the authority and flexibility it needs to carry out its mission and protect our borders.

Your bill, Mr. Chairman, and the President's budget call for more dollars for enforcement—border patrol and asylum officers. I know such forces are needed nationwide but I would remind my friends once again that Florida has borders, too. Our borders might be water but they are the confines of my State.

We need enforcers just like our friends with land borders. The Administration is providing more asylum officers to our State but I would also urge the Congress to also support enough enforcement officers for other missions of immigration law.

Let me give you an example. The State of Florida has been most successful in cooperation with the INS to deport criminal aliens. We took the Institutionalized Hearing Program (IHP) and extended its prospects.

As you know, the enhanced IHP is in five states and is based on state corrections cooperating with the INS to have deportation proceeding conducted more expeditiously for criminal aliens while in State custody. Therefore, after completion of their sentences, there is no voluntary departure—but instead, the aliens are processed while in custody, escorted to the airport or border and deported.

In Florida, we have taken this a few steps further. We've moved to rid our corrections system of some 5,500 aliens. While millions of immigrants have come to this country, followed the rules and have worked hard to succeed, these people came to this country and broke the law.

Last April, I entered into an agreement with the INS which provided for expedited deportation of nonviolent criminal aliens serving time in Florida's corrections system. Under this initiative, aliens are considered for clemency under the same rules as citizens.

Thus far, we have deported more than 250 non-violent criminal aliens. We've turned them over to the federal government and put them on a plane—for a one-way ticket out of our country so they will never burden us again.

The bottom line is this: Every cell we open up through this process is one less cell we have to build to house violent offenders.

This action has saved the State an estimate \$10 million. I believe we can eventually double that \$10 million savings—by just focusing on this population of non-violent criminal aliens.

Then in October, we orchestrated another demonstration project that extended the focus of our Criminal Alien Deportation Program from our prison system to the streets.

This unprecedented initiative gives prosecutors in Monroe, Dade, Broward and Palm Beach counties additional tools to combat crime. This initiative enables them to use deportation as an option before trial with aliens who face misdemeanor and nonviolent felony charges.

This agreement lets South Florida's state attorneys focus their time and energy on prosecuting the most dangerous offenders. It conserves precious law enforcement and judicial resources, and lightens the court calendar.

Mr. Chairman, I am as aware as you are about the budgetary implications of all I recommend. But, Mr. Chairman, the people of Florida are bearing a more than \$1 billion a year immigration burden to pay for health, education and criminal justice.

That's more than a billion dollars in state and local taxes that come out of the pocket of Floridians. That's why we're demanding justice and compensation from the federal government.

Frankly, I am concerned that the cost Florida's local and state governments must pay to deal with immigration is going to get even larger if certain budget issues currently being considered by Congress are realized. I would hope that members seriously consider who will provide health care and education to the thousands that continue to enter if federal funds are restricted.

I'm encouraged by recent action by the Congress and the Administration to help lessen the burden of illegal immigration on the states. Thanks to the leadership and foresight of the Congress, President Clinton and Attorney General Reno, we've seen some much-needed support come from Washington including:

\$130 million for criminal aliens Fiscal Year '95; the President's request of \$300 million for Fiscal Year '96 and the House crime bill authorizing \$650 million for five years. I remind you that the CBO estimated the total country's needs for one year are \$630 million;

\$50 million for the Emergency Immigrant Education Act for Fiscal Year '95; and President Clinton's request for \$100 million for Fiscal Year '96;

\$101.6 million for the on-going immigration emergency fund—which unfortunately is the brunt of a recent House rescission of \$70 million. I can tell you from Florida's point of view that this funding should not be cut.

And a new request by the President in his Fiscal Year '96 budget for \$150 million to reimburse states for the cost of providing Medicaid emergency services to the undocumented. This is an unfunded mandate imposed on the states by the Omnibus Budget and Reconciliation Act of 1986. (OBRA '86).

Mr. Chairman, these initiatives give me hope.

Last December, the U.S. District Court in Miami dismissed my immigration suit against the federal government. While acknowledging that Florida was unfairly burdened by the federal government's immigration policy, the Court ruled that the question was a political one. The court said this issue is the privy of Congress and the Administration and should not be decided by the courts.

I am appealing that decision but I am also here today to continue my battle on the other fronts located here in our Nation's Capitol.

Several years ago, I joined with the governors of the largest states who are impacted by the burden of immigration. We have toiled long and hard together to influence the federal government on the need for reimbursement to assist us in carrying for the alien populations we *have* to serve.

We know there are other initiatives which could help states.

Expand the IHP program to all affected states. The Justice Department claims that 70 percent of their federal detainees with deportation orders are criminal aliens—lets get them out of this country.

Put a comprehensive refugee resettlement program in place. Resettle these good, decent people in other countries, regions, and other states. Even then, please remember that 85 percent of the Cubans expected to arrive in the United States will return to Florida—no matter where they are resettled. This fact must be taken into account.

Maintain immigration as a priority issue in this country—until the resources match up to uncontrolled immigration's astonishing impact on our communities.

Make refugee assistance programs more reflects of U.S. refugee policy. Make levels of assistance correspond to the annual number of refugees which will be allowed entry. As the Senior Senator from Florida, I—along with Dante Fascell—was the author of many of the refugee programs—like targeted assistance—and realize there must be sufficient aid to meet the needs of those refugees who are granted entry. The overall level of refugee assistance funding has been flat for many years while the arrivals of those eligible for these programs has increased dramatically. Federal agencies have to stretch their dollars to accommodate the increased number of arrivals. They have attempted to do so by limiting program eligibility. For example, the Office of Refugee Resettlement intends to cut back program eligibility to five years. Previously there was no limitation. This program provides English training, job search, medical and other assistance that helps legal refugees, asylees and entrants succeed in our society. These are the kind of people that have made our nation great. Limiting program eligibility for legal aliens will shift additional costs to our state.

Require INS to complete and formalize the mass immigration emergency plan and allow local law enforcement participation through a mutual aid agreement.

Strengthen the INS resources in Florida—additional border patrol and an expansion of the Krome Avenue Detention Center would be a good start.

And, lastly, I wanted to renew my call for giving each alien a charge card—a federal charge card—that identifies their status and charges their care to the federal government. In line with today's electronic benefit transfers aliens can use that card in our hospitals and clinics, in our schools and in our social services centers. The card is only good until their residence status is determined. This would be a major incentive to complete their processing and remove them from the federal charge. Currently, there is no incentive. We, in the states, care for them while time lapses. Let the federal government get the bills and I guarantee you we'll see swift results.

We have talked today about some of our successes but we have a long way to go before we can declare victory.

Mr. Chairman, I must once again ask this Subcommittee to help the federal government enforce U.S. immigration laws. We need your leadership to assist the states in coping with the escalating immigration burden impacting our communities.

We've taken great steps to build a partnership between the states and federal governments on immigration. Let's continue to build on this partnership and bring immigration to our people. Thank you.

Senator SIMPSON. Lawton, thank you very much, and you know about windmills, too. I watched you as you worked as chairman of the Budget Committee. Believe it or not, your old friend, Pete Domenici, struggles on; the two of you side by side, I remember, long into the night, and still people not hearing what is going to happen to the country with a \$5 trillion debt and all the rest of it that goes with it. You were certainly very important in bringing all of that to our attention.

We will each have a 5-minute round, and so I will take mine, and then Senator Grassley, or whoever. Senator Feinstein was here. We go in the order of attendance, as we do in the Finance Committee, now that I am on there—power.

I appreciated your remarks. I remember when you served here. I remember when you voted a tough vote on that 1982 act because in that bill was repeal of the Cuban Adjustment Act. I remember Ron Mazzoli and I, my sidekick then, went to Florida. You hoped we would do that; we did. We visited the camps. We listened to the concerns of the agricultural growers. We held a hearing in Miami.

I can remember, too, that in the last session of Congress in 1984, the majority of the Florida and California delegations—not you—acted in concert in the conference committee to kill the bill because the \$4 billion State reimbursement provision we had in that bill was not sufficient. Those delegations demanded full Federal reimbursement. I thought \$4 billion was pretty good, and so we just closed up the shop and that was the end of the conference. I remember that one. That was a painful thing to do, but they were just there saying all of it, all of it.

So your proposal for an alien Federal charge card is certainly unique. Having those charges presented to the Federal Government would indeed get some speedy results, and I think proposition 187 sent the same message of frustration. With what I see moving and whirring in the apparatus of Government, and I think with Attorney General Reno, you are going to see some immigration reform.

I note you suggest we have computerized systems necessary to enforce employer sanctions. I assume you refer to the data base providing this information on an immigrant's work eligibility and Social Security data bank which would provide information on authenticity.

Under S. 269, those computer systems would be combined or otherwise integrated, so one call could be made to a central location to receive confirmation of a new hire authority to work. Do you support that verification system in that measure?

Governor CHILES. Yes, sir. I have never been in great fear of the mark of Cain theory. I remember, Mr. Chairman, as a Senator up here, when I went to the grocery store in Virginia to cash a check to pay for my groceries, I had to produce identification, my driver's license, Social Security, other things. I never felt that it put the

mark of Cain on me, and I think until we have a verifiable system of determining whether somebody is eligible for employment in this country, we will never be able to close the borders.

Senator SIMPSON. Well, I agree, and I know you were helpful to me then.

Back to the Cuban Adjustment Act, obviously, I am up to the same things I was up to before. That act—I don't think people understand it. You bring it up and then it comes into talking—I think Senator Simon discussed it very well this morning. It passed 30 years ago, in November of 1966, to provide a means of granting legal status to thousands of Cubans who fled that island after it became clear that Castro was establishing a Communist government.

Under our laws at that time, any person fleeing a Communist regime was, by definition, a "refugee." That was the law, so we needed a means at that time to adjust the status of the Cubans who fled here. But since Ted Kennedy and I—and he was the moving force in the Refugee Act of 1980, which was solely to define a person who is a refugee under United States and international definition. We no longer need special laws to obtain legal status in this country.

In my mind, it just makes no sense to allow any Cuban or any other person who comes to the United States legally or illegally to jump to the head of a long line of people waiting to emigrate and automatically receive a green card after 1 year here, no questions asked. It just is absurd. People don't understand that, that you can be a person illegally in the United States, go to a relative in Florida, visit for a year, sustain yourself, work, do anything as an illegal, wherever you can do it, and then with the proper W-2 or whatever you receive, walk in a year later and get a green card, no questions asked. It is bizarre, and we are going to do something about it; at least we will have votes on it. I think it is a total anachronism and should be repealed.

Do you feel that it is still required on our books?

Governor CHILES. Mr. Chairman, I think I would agree with your statement that it is terribly misunderstood. There are a lot of people in my State that believe it has something to do with the status of whether you can flee from persecution and that it will take away from that. It does not.

I think, again, people were surprised that under the Safe Haven Act we could interdict Cuban nationals and take them to Guantanamo and hold them there. I have to say that I don't think there is the reason for the act that there was at the time it was passed. I support the vote that I made on it some time back.

Senator SIMPSON. It was a gutsy vote.

Senator Simon.

Senator SIMON. I apologize to our former colleague. I had to be over on the floor. I missed your testimony. Let me just comment on one thing that you mention, and that is some form of verification. I think it is absolutely essential. I have been a member of the American Civil Liberties Union for a long time. I don't believe it violates anybody's civil liberties to have some kind of verification system.

Other than that, I appreciate the leadership you are showing in Florida and I will read your testimony.

Thank you, Mr. Chairman.

Senator SIMPSON. Senator Grassley has been very active in immigration issues, originally on the subcommittee. I tried to lure him back and he said he had had enough.

Senator GRASSLEY. Well, I don't have any questions, but what I do want to comment on, coming from the Midwest where maybe you think we don't have illegal alien problems—in the little town of Haywarden in northwest Iowa, we now have three illegal aliens connected with the murder of a 19-year-old, so that is a very hot issue in northwestern Iowa now.

The sad commentary about these individuals is that at least some of them had been deported once already and in a little while were right back in the community, and not too long after being back in the community were involved with the death of this boy.

Now, since I heard some smirks, the point is I assume that if we only have three illegal aliens, it is not a problem. There are problems everywhere in the United States with illegal aliens, and I am telling you that the people of this country, and particularly the people of my State, don't understand why there has to be so much red-tape in removing people from the country, and, once removed, why it is so easy to get back into the country.

I know that the chairman of the committee is dealing with that in this legislation, and I know that he is going to be very in-depth in his approach to make sure that the problems that we hoped to solve with the 1986 legislation that we didn't solve will hopefully be solved with the legislation that comes out of this subcommittee this particular time.

The extent to which I was involved as a member of this subcommittee with the 1986 legislation, and look back with all of the expectations that it would take care of the illegal alien problem—and everybody had very good intent that it would do that; there was nothing but the best of intent. With all of the four or five major things we did in that bill, we thought they would solve the illegal immigration problem, but they haven't. So this time we want to make sure that we don't come up short in the process.

All of the groups that we had to satisfy in the legislation, the last one—I hope every one of those that told us that the compromises that we agreed to would take care of our concerns now realize that their credibility is as much at stake as our credibility when we thought that what we were passing would solve our problem, and that we learn from that lesson. We really have to learn from the lesson of 1986, and we have to make a determination: Are we going to control our borders and be an independent nation. Controlling our borders is a basic aspect of being an independent nation.

We cannot allow these problems to continue without being addressed because I think the credibility of Government, the credibility of our processes of Government, the credibility of us as elected people are at stake, Mr. Chairman. So whoever feels that three illegal aliens involved in the death of a 19-year-old Iowa boy isn't a problem—I hope that they will think twice about it.

Senator SIMPSON. I want to say about you—and I misspoke, earlier. "I need you back on this subcommittee," and Senator Grassley

said, boy, I have done the heavy lifting and the tough battles." After some urging, he did indeed come to the subcommittee once again and adds a tremendous dimension of sincerity, which is his strongest point, to the issue.

It is heavy work, as Paul and Ted and I know because only the three of us would do it before. I just want to mention the names on this subcommittee. I think it is a powerful group of people who want to do some powerful, heavy lifting, and that is myself and Chuck Grassley and Arlen Specter and Jon Kyl and Ted Kennedy and Paul Simon and Dianne Feinstein. We are going to do something.

Dianne, it is 5 minutes, if you care to have a round.

Senator FEINSTEIN. I will try, Mr. Chairman. Thank you.

Welcome, Governor. It is good to see you again.

Governor CHILES. It is good to see you, Senator.

Senator FEINSTEIN. You know, in California I think it is fair to say employer sanctions thus far have been a failure and I have tried to figure out why they are a failure, and so I have talked with individuals about hiring practices. Many people just go ahead and hire and they figure, well, unless I am going to be a Cabinet official subject to Senate confirmation, I am never really going to get caught.

I have become convinced that the key to employer sanctions is a simple method of verifying an employee's status, and then, frankly, a civil fine that is sufficient enough to convince people that it doesn't pay to be illegal. I am of the belief that even if you have only six cards, each one has to have a verification system and you have created an unwieldy system. So I happen to agree with those who believe that we need to go to a worker I.D. to be used only for that. When you are asked to verify your employment status, you have something that is holographic and that is counterfeit-proof that an employer can verify, and if it is a forged document and the employer goes on and hires the individual, there is a substantial enough civil penalty to really dissuade him from doing so.

Would you agree with that?

Governor CHILES. Yes, I certainly do. I think you have got to have a verifiable, tamper-proof way, and it has got to be simple. It seems to me the chairman was really working on that. My memory fades a little bit, but it seems at that time there was a Senator from California, no longer in the Senate—he now holds another position—who was very much against that. That is just part of my clouds in my memory, you know.

Senator SIMPSON. The fog; the Shadow knows. [Laughter.]

Senator FEINSTEIN. You mentioned incentives, also, the powerful incentive to work, and I think a powerful incentive in this country is a benefit structure that is very generous by comparison with what other countries provide to their people.

Does Florida have any programs that you might commend to us as being worthy of really providing this disincentive for immigration?

Governor CHILES. I think I would not commend it, but Florida has taken the position that the people that are in our State that the Federal Government allows to be there, or has allowed to be there—we have to provide some method of trying to educate those

people and trying to give them health care. That is the reason I have sued the Federal Government for \$1.5 billion because we have been forced to do that.

So, again, a proposition 187 or some of the things the House has there that say we are not going to provide benefits—unless you do something to help us deport ones that are illegal or keep others from being here, if you are going to allow them by your inaction or your policy to be here, then don't make the States have to pick up all the burden for the fact that they are here.

Senator FEINSTEIN. I happen to agree with you 100 percent, and I hope one of the things we accomplish—and I think Senator Simpson wants to do it and I know I do—is be able to deem to the States the ability to make the necessary changes in State programs to see to it that there is the kind of enforcement available, and also preventing people here in an undocumented status from gaining Medicaid and gaining some of the other programs. I think along with reimbursement by the Federal Government, if you deem to the States that responsibility, we can accomplish a good core program.

I thank you for being here, Governor. It is good to see you.

Governor CHILES. Thank you.

Senator FEINSTEIN. Thanks, Mr. Chairman.

Senator SIMPSON. Thank you, Senator Feinstein. You are going to be a great help to us in this cause.

I just have a couple of questions, Lawton, because here is one, too. There are a lot of ironies in this one, but when people in the States are asking for the Federal Government to help, they have had laws on their books, or their communities have laws on their books in many cases prohibiting the people from communicating with the INS regarding illegal immigrants.

It sprung from the sanctuary movement, which I thought was remarkable, as people said we are just going to take in everybody because anybody here at our door is seeking sanctuary, which was an abuse of a beautiful and generous act of faith. Sanctuary has a religious significance. Boy, they misused that; the groups had a lot of fun with that one.

So people were at churches and they were taken in, and they were not fleeing anything; they were just leaving. A lot of them left El Salvador before they even knew factions were doing things to each other there. I have been through all that before. But if you would certainly join us in this—and Senator Reid has been active in this, and Senator Feinstein.

Governor CHILES. Absolutely, and we don't have any of those laws on our books, I will guarantee you.

Senator SIMPSON. But some communities do in your State.

Governor CHILES. I doubt if our communities do, but I would be glad to look at that.

Senator SIMPSON. Well, we are going to just say that if you want reimbursement—I think you are right about that; we are going to do that. We have an obligation, but not to communities that are going to maintain laws and ordinances that prohibit certain agencies from communicating about law enforcement with the INS.

Governor CHILES. I would agree with that 100 percent, and I would like to know if you have information that any of our communities have that.

Senator SIMPSON. I will check on that. I think we are putting that on most pieces of legislation now, but we are going to strengthen that.

And then finally—I will commend the administration for taking decisive and effective action with regard to the boat people, both Cubans and Haitians. I supported that, and I said that publicly, until the United States-Cuba Accord came up, which I considered to be a misuse or abuse of the Attorney General's parole authority. I did not speak to the Attorney General about that this morning however.

I know you probably have a different view there, but again we don't know how many are going to come in there under that accord, how many we will expect—10,000, 20,000, 30,000—under this special program. I hope it is being done subject to the usual exclusion provisions that are on the books, but that is not your responsibility. What do you think of that one?

Governor CHILES. Well, I think that there was some understanding prior to that of what legally could come in or what Cuba's quota was. There was an existing quota. My feeling has always been that existing quota ought to be reduced one by anybody that comes out of Guantanamo or any of the safe haven places. Without that, I think you get a double counting, and I don't know why we should have that.

Senator SIMPSON. I am not going to take the rest of my time.

Paul, do you have anything, or Dianne?

Senator SIMON. I do not have any further questions.

Senator SIMPSON. Lawton, it is good to see you, and thanks so much. We will be in close touch with you as we proceed.

Governor CHILES. We wish you great success as you try to help us out of this maze. Thank you.

Senator SIMPSON. Thank you very much.

Now, our final panel of the morning hour will be the Honorable Doris Meissner, Commissioner of the INS; the Honorable Shirley Chater, Commissioner of the Social Security Administration; and Dr. Susan Martin, who is the Executive Director of the U.S. Commission on Immigration Reform.

It is good to see you all again. We know each of you and are very anxious to hear your thoughts. I believe, with the time constraint, I am going to set the button 5 minutes each, and then the rounds of 5 minutes by those of us on the Senate panel.

So, Doris, if you would please proceed, thank you very much.

**STATEMENTS OF A PANEL CONSISTING OF HON. DORIS MEISSNER, COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE; HON. SHIRLEY S. CHATER, COMMISSIONER, SOCIAL SECURITY ADMINISTRATION; AND SUSAN MARTIN, EXECUTIVE DIRECTOR, U.S. COMMISSION ON IMMIGRATION REFORM**

**STATEMENT OF DORIS MEISSNER**

Ms. MEISSNER. Mr. Chairman and members of the committee, thank you for the opportunity to be here today.

The President's fiscal year 1996 budget provides major increases for immigration enforcement, and legislation that the President will shortly send to Congress will provide a wide range of enforcement improvements. Your bill, Senator Simpson, has many similarities to the bill that we will be proposing. The similarities signal an important opportunity to craft a bipartisan approach to combatting illegal immigration.

On February 7, the President announced a \$1 billion budget initiative for addressing illegal immigration in fiscal year 1996. The President called for strong action on enforcement and backed it up with resources to do the job. Mr. Chairman, you made some comments earlier about the White House's involvement in this issue, and I want to say here that I think just from my own experience I can say that I have had more opportunity to interact with the President than probably all of my predecessors put together. I have heard him speak about this issue; I have heard him ask questions about the issue. I have seen his commitment to immigration enforcement and to a resource package that is real and that makes sense. I think that we are functioning effectively in giving to the Congress both resource proposals and legislative proposals that show real leadership in this arena.

After years of neglect and open doors, the administration has made immigration enforcement a top priority. At INS, we are starting with critical areas, getting control at the border, removing criminal aliens, and now focusing on interior enforcement.

I want to take this opportunity to address for just a few moments what I know is a major concern of this committee and of the Congress, and that is the management of INS and the immigration system. I promised you 18 months ago at my confirmation hearing that I would strive to fundamentally alter the way that the INS does business and to reorganize and professionalize the agency. I knew when I accepted this position that the INS had been underfunded and neglected for years.

I can report to you that we are making significant progress, perhaps best illustrated by testimony last month by the General Accounting Office which concludes that "INS seems to have made many efforts that are underway to bring more effective management improvements. These include formulating a vision and associated strategic plans, new budget formulation processes, enhanced financial controls, and new information systems and hardware."

We have done these things. We are making major investments in modernizing the way we do our work. We have received national performance awards from the Vice President's reinvention team, the Hammer Awards. We have received computer awards, as Sen-

ator Leahy observed this morning. We have made many improvements that have increased our productivity and made us be more effective in our operations. I am the first to acknowledge that we have a very long way to go, but I am proud of the steps that we are taking and I look forward to working with the committee on the days ahead on these issues.

Now, as to the substantive areas of our budget request, the Attorney General has spent time with you this morning talking about border control. I would like to simply add two points, one on the point Senator Feinstein raised where apprehensions are concerned, and that is that more apprehensions do not necessarily mean more aliens coming into the country. We are putting more people on the border. We are substantially increasing the productivity of our officers. More apprehensions mean, in the places that they are occurring, that we are being more productive and that we are arresting people more times. So the apprehension figures tell a variety of stories and they need to be analyzed carefully.

Second, I would like to simply tell you that we have been receiving a great deal of support from southern California on the climate and changes in southern California where enforcement is concerned. We have testimony from residents of Imperial Beach that tells us far more than just the statistics.

People are attesting to the fact that there is dramatic change since Gatekeeper. They have lived with these situations, and I have a number of letters today that I would like to submit for the record so that you hear from the people that are actually experiencing the changes. They are real and they are dramatic.

The major aspect of what we are going to talk about today, of course, has to do with interior enforcement, and that is a fundamental, central element of the President's fiscal year 1996 budget and of the legislation that we have been considering.

As our Border Patrol agents will tell you, border enforcement can never be fully successful until we reduce illegal entry at the workplace. Moreover, we must have additional deterrence by investing resources and proposing legislation that puts in place a far more credible removal program.

We will shortly be submitting legislation, as I said. We are prepared to talk to you today about the various verification efforts that are underway and that we are talking about in legislation. As you know, Senator Simpson, we have always worked well together over many, many years, and I am very much looking forward to opening this new chapter of the committee's efforts on these issues.

Thank you very much.

[The prepared statement of Ms. Meissner and the letters follow:]

#### PREPARED STATEMENT OF DORIS MEISSNER

Mr. Chairman and members of the Committee, thank you for the opportunity to appear before you today to discuss the initiatives for strengthening immigration enforcement that are reflected in the Administration's legislative proposal, The Immigration Enforcement Improvements Act of 1995. I will also discuss Chairman Simpson's bill, S. 269, the Immigrant Control and Financial Responsibility Act of 1995, which has many similarities to the bill we will be proposing. These similarities signal an important opportunity to craft a bipartisan approach to combatting illegal immigration that we cannot afford to squander. The bills are not identical and I will address some of the differences shortly.

On February 7, 1995, the President announced a major initiative for addressing illegal immigration. First, as the Attorney General has emphasized today, we must gain control of our borders. In furtherance of this objective, the Administration's bill would: substantially increase the penalties for alien smuggling and document fraud; expand law enforcement authorities to combat smuggling; authorize the use of a streamlined exclusion process when circumstances threaten the integrity and effectiveness of our normal process; and provide for a study of the effects of interior repatriation on recidivism.

Second, we must address the principal incentive for illegal immigration—employment—by strengthening our worksite enforcement and improving the methods for verifying employment authorization. To this end, the Administration bill: endorses the Jordan Commission proposal to conduct pilot projects to test methods to accomplish reliable verification of employment eligibility; reduces the number of acceptable employment verification documents; increases fines against employers who hire unauthorized workers and who also violate applicable labor laws; increases the penalties for the use of fraudulent documents; and provides increased enforcement authority to the Department of Labor. It is important to note that the prospect of employment in the United States is the principal attraction not only for people to come across our borders without inspection but also for those who arrive with apparently legitimate nonimmigrant visas to remain beyond their authorized period of stay.

Third, the Administration is committed to increasing the number of criminal aliens and other aliens removed from the United States and deterring their reentry. On this important issue the Administration bill would: provide civil penalties for a failure to depart the United States under a deportation or exclusion order; authorize deportation proceedings by electronic means; provide for stipulated orders of deportation to be entered by an immigrant judge without the necessity of a hearing; restructure and place limitations on availability of relief from exclusion or deportation under sections 212(c), 242 (voluntary departure); and 244 (suspension of deportation); streamline the judicial review process to eliminate protracted appeals; and authorize the granting of funds to study ways to improve efficiency in the removal process by increasing the availability of pro bono representation and counseling for aliens who are detained.

In addition to these areas, the Administration is strongly committed to reducing the burden of illegal immigration on the States. This Administration was the first to request funding for the State Criminal Alien Assistance Program (SCAAP) that was authorized under the Immigration Reform and Control Act of 1986. The only effective way to reduce the burden of incarcerated aliens in the long run, however, is to deter illegal immigration. The provisions of the Administration's bill will help us to do that.

Many of the legislative proposals in the Administration's bill are substantially similar to S. 269. We strongly endorse those provisions as we believe they constitute a firm foundation for an effective legislative approach to deterring illegal immigration. In addition, our legislative proposal includes a number of provisions that merit serious consideration in any immigration enforcement measure you take up. I will discuss those sections briefly.

#### I. BORDER CONTROL

As the Attorney General said today, regaining control of our borders has been and must continue to be the primary focus of our enforcement efforts. The Administration Bill provides for strengthened border control through special exclusion provisions, enhanced penalties, and pilot programs for interior repatriation.

The Cuban exodus last year demonstrated the need for a prompt procedure for dealing with excludable aliens who seek admission to the United States. Both the Administration bill and S. 269 contain a provision for special exclusion procedures that would allow the Attorney General to order an alien excluded and deported without a hearing before an immigration judge. This provision is substantially similar to section 141 of S. 269, except that the special procedures (and the need to have asylum officers readily available to screen asylum applications) would be available for use at the discretion of the Attorney General when "extraordinary immigration situations" threaten our existing procedures. The special exclusion procedures in S. 269 would apply to excludable aliens who use fraudulent documents, fail to present documents, or are apprehended at sea. We believe our approach affords appropriate discretion for the Attorney General to address fraudulent document use and smuggling situations, while limiting the impact on agency resources that would result from having two parallel processes in place for exclusion.

In addition, the Administration bill would authorize use of the existing Immigration Emergency Fund for third country repatriations without the requirement that

the President declare an emergency. The bill would also amend 50 U.S.C. 191 (Magnuson Act) to permit control and seizure of vessels where an immigration emergency is determined by the Attorney General to exist. Under the bill, the Attorney General could delegate to local enforcement officers the authority to enforce the immigration laws when she determined that an actual or anticipated mass migration presents an urgent need.

The Administration bill directs the United States Sentencing Commission to increase the base offense levels for failure to depart under an order of deportation, for illegal reentry after deportation, as well as for passport and visa fraud. These increases are needed to reflect the enhanced penalties provided by the Violent Crime Control Act of 1994.

## II. CONTROL OF UNLAWFUL EMPLOYMENT AND VERIFICATION

The Administration recognizes that employment is the single most important incentive for illegal immigration and that employer sanctions are a major tool for interior enforcement, including reducing the attraction for nonimmigrant overstays. The Administration's commitment to Employer Sanctions enforcement is reflected in the FY 1996 budget submission which includes an investment of \$79.5 million for worksite enforcement and verification of employment authorization. The Administration bill strengthens employer sanctions to promote employer compliance and to increase their effectiveness as a deterrent to illegal immigration.

The Administration bill would double the amount of the employer sanctions penalties for employers who have also willfully or repeatedly violated the Fair Labor Standards Act, the Migrant and Seasonal Agricultural Worker Protection Act, and the Family and Medical Leave Act. Employer sanctions penalties collected in excess of \$5,000,000 would be credited to INS appropriations to fund employer sanctions enforcement and related expenses. Fees collected from employers, recruiters, and referrers who subscribe to a telephone verification system pilot project would be credited to the INS salaries and expenses appropriation to be available for employer verification costs. Like S. 269, the Administration bill would amend the criminal provisions on fraud and related activity in connection with identification documents if committed to facilitate a drug trafficking offense or an act of international terrorism. The bill would authorize Immigration and labor Department Officers to issue subpoenas in employer sanctions cases.

The reduction of the number of documents that can be used as evidence of employment authorization and identity is of vital importance in our efforts to combat the use of forged and counterfeit documents and to engender employer compliance with the law. Our proposal would eliminate a number of documents that now can be used to establish employment authorization or identity: birth certificates, the certificate of citizenship, the certificate of naturalization, and an unexpired foreign passport stamped by the Attorney General with employment authorization. Under our proposal, only a United States passport, resident alien card, alien registration card, or other secure employment authorization document issued by the Attorney General would be acceptable to establish both identity and work authorization. If a person does not present one of these documents, he or she would be required to present (1) a social security card or other card designated by the Attorney General as authorizing employment in the U.S., and (2) a driver's license or other state identification document.

A system for accurate verification of a potential employee's status is vital to assist employers in meeting their obligations to hire only authorized aliens. Our proposal calls for the Attorney General to conduct pilot projects to test methods to accomplish reliable verification of eligibility for employment. Pilots may include expansion of the telephone verification system up to 1,000 employers in FY 1996, a simulated linkage of INS and Social Security Administration databases, a process to allow employers to verify employment eligibility through SSA records using INS records as a cross-check, a two-step process; and improvements and additions to the INS and SSA databases to make them more accurate and easier to use for employment verification purposes. The Administration bill would establish requirements for protection of confidentiality of data in the operation of these pilot projects under section 202. It provides that no personal information collected under the project may be made available to any Government agencies, other than as necessary to verify that the individual is not an authorized alien. The only exception is that the information may be used to enforce the INA and in criminal enforcement of the immigration related fraud provisions of Title 18 of the United States Code.

The administration's proposal requires the Attorney General and the Commissioner of the Social Security Administration to develop a procedure for correction of erroneous information. All agencies, employers, and individuals must be advised of

this procedure. The section makes it clear that none of its provisions may be construed to authorize, directly or indirectly, the issuance or use of national identification cards.

### III. ILLEGAL ALIEN REMOVAL

One of the most important deterrents to illegal immigration is a credible and timely threat of removal for violation of the immigration laws. Too often aliens fail to appear for their hearings or abscond in the face of an order of deportation. The Administration's proposed budget for FY 1996 includes an enhancement of \$166.2 million to increase the Service's detention and removal capacity. The Administration bill would further enhance our ability to remove illegal aliens through imposing penalties on aliens who willfully fail to depart, streamlining the appeals process, and restricting relief from deportation.

The Administration bill would save travel and hearing time and resources by permitting deportation proceedings to be conducted by video conference or telephone. It would also clarify the authority of immigration judges to issue subpoenas in proceedings under sections 236 (exclusion) and 242 (deportation) of the INA. To further streamline the process the Administration bill would permit the entry of orders of exclusion and deportation stipulated to by the alien and the INS, and provide that such stipulated orders are conclusive. By regulation, an alien who stipulates to a final order of deportation will agree in writing to waive any appeal rights.

The proposal would limit relief under section 212(c) of the Act to a person who has been lawfully admitted to the U.S. for at least 7 years, has been a lawful permanent resident for at least 5 years, and is returning to such residence after having temporarily proceeded abroad not under an order of deportation. The 5-year and 7-year periods would end upon initiation of exclusion proceedings. Also, an aggravated felon will be eligible for section 212(c) relief only if he has been sentenced to less than 5 years, in the aggregate, for the aggravated felony conviction or convictions. Time actually served will not be a factor in determining eligibility.

We will also propose the consolidation of two existing forms of relief from deportation (suspension of deportation under section 244 and a waiver of deportability under section 212(c)) into one form of relief "Cancellation of Deportation." A lawful permanent resident would be eligible for cancellation if he has been an LPR for 5 years, has resided in the U.S. after lawful admission for 7 years, and has not been convicted of an aggravated felony or felonies for which he has been sentenced, in the aggregate, to a term or terms of 5 years or more. Non-permanent residents would have to show that they have been continuously physically present in the United States for 7 years and that their removal would cause an extreme hardship. The 7-year and 5-year periods would end with the issuance of an Order to Show Cause initiating deportation proceedings. This provision would clarify an area of the law regarding the cutoff periods for these benefits that has given rise to significant litigation and different rules being applied in different judicial circuits.

We would also amend the existing provisions for voluntary departure. prehearing voluntary departure may be granted to any alien other than an aggravated felon. The Attorney General may require a voluntary departure bond. At the conclusion of a deportation proceeding, voluntary departure may be granted only if the person has been of good moral character for 5 years prior to the order, is not deportable under certain criminal or national security grounds, and demonstrates by clear and convincing evidence that he has the means to depart the United States and intends to do so. The alien would be required to post a voluntary departure bond. Any alien who failed to depart within the time set for voluntary departure would be subject to civil penalties of \$500 per day. Judicial review of voluntary departure orders would be limited.

The Administration is committed to ensuring that aliens in deportation proceedings are afforded appropriate due process; however, the availability of multiple layers of judicial review has frustrated the timely removal of deportable aliens. The Administration bill would rewrite the judicial review provisions of section 106 of the Act. It would provide for review of an order of exclusion to be in the Court of Appeals instead of District Court and would reduce the time period within which a petition for review could be filed. It would also provide that the administrative findings of fact underlying an order of exclusion or deportation may not be overturned unless a reasonable adjudicator would be compelled to conclude to the contrary.

The Administration bill would authorize appropriations of funds to conduct a pilot program or programs to study whether the efficiency of deportation and exclusion proceedings against detained aliens can be enhanced by increasing availability of pro bono counseling and representation. The Administration bill would also make several amendments to the judicial deportation provisions of the Act, including au-

thorizing district courts to enter a judicial order of deportation when the sentence imposed on an alien before the court causes the alien to be deportable or if the alien has previously been convicted of an aggravated felony.

#### IV. ALIEN SMUGGLING CONTROL

INS routinely conducts investigations of large scale criminal alien organizations involved in smuggling aliens and narcotics into the United States. These rings use false or fraudulently procured identification documents to circumvent immigration controls, obtain naturalization by fraud, or more recently, like organized Chinese smugglers, land hundreds of aliens directly onto U.S. shores. Many investigations involve multi-agency task forces, in which the investigative targets are engaged in a variety of criminal activities and enterprises including counterfeiting, illegal acquisition of firearms and explosives, narcotics smuggling and trafficking, and money laundering. These groups engage in racketeering activities including extortion, bribery, obstruction of investigation by violence, and financial fraud. The Administration bill will contain proposals (also included in S. 269) to strengthen our control of alien smuggling: authority for the use of wiretaps in criminal conspiracies; authority to seize and forfeit real and personal property in cases of alien smuggling and harboring of aliens (current forfeiture authority is limited to conveyances); and authority to use appropriated funds to lease space, or to establish, acquire, or operate business entities for undercover operations. Funds generated by such operations would be deposited in financial institutions or used to offset expenses incurred in the course of such operations. The Administration bill would also apply the RICO provisions to smuggling of illegal aliens for gain.

The Administration bill would make several changes relating to the definition and applicability of "aggravated felony." It would include smuggling offenses under section 274 of the INA in the definition of aggravated felony. It would amend the statutory definition of "aggravated felony" by adding a requirement that the offense of trafficking in document fraud be "for the purpose of commercial advantage." It would provide that the term applies "for all purposes to convictions entered before, on, or after the date of enactment of this Act." This amendment would end controversy on which convictions fall in the definition. The bill would also amend the provisions relating to withholding of deportation of the Act to make per se ineligibility for relief based on conviction of an aggravated felony applicable only when an alien has been sentenced to five years or more. This is consistent with our obligations under international conventions with respect to nonrefoulement.

#### V. INSPECTIONS AND ADMISSIONS

Title V of the Administration bill will contain several provisions to strengthen our inspection and admission procedures. It would increase the penalty for aliens brought from foreign contiguous territories. A "stowaway" would be defined to mean any alien who obtains transportation without consent either through concealment or evasion and clarifies that it is the duty of the carrier to detain a stowaway until he has been inspected by an immigration officer and to pay for any detention costs incurred by the Attorney General should she take custody of the alien. The fine against a carrier for failure to comply with its obligations would increase from \$3,000 to \$5,000 per stowaway, to be retained by the INS as offsetting collections. The Administration bill would also eliminate the current exemption from payment of the inspections user for "cruise ships."

#### CONCLUSION

Mr. Chairman, you have worked hard over many years to make the Immigration and Nationality Act a more effective statute to enforce the immigration laws and provide immigration benefits in a rational manner. Your bill, S. 269, and the Immigration Enforcement Bill of 1995 contain many provisions to further goals that we share—heightened border control, effective exclusion and deportation procedures, and improved employment authorization verification.

The challenge to us is clear—pressure at our borders, criminal aliens in our prisons, and unauthorized workers in the workplace. We look forward to working with the Committee to craft bipartisan legislation that deters illegal alien entry and presence, while maintaining opportunities for legal immigrants to contribute to our economy and society.

I would be glad to answer any questions you may have.

CAL FAB INC.,  
*San Diego, CA, February 12, 1995.*

Ray Ortega,  
*U.S. Border Patrol, Control Agent in Charge, Chula Vista, Station.*

DEAR MR. ORTEGA: Today's issue of the San Diego Union-Tribune had an article on the front page written by Marcus Stern regarding the apparent stalling of "Operation Gatekeeper". As a resident, property owner, and business owner in the Tijuana River Valley I consider myself on the "front lines" if you will of Operation Gatekeeper. I have not been awakened once during the night since the operation started. There was an immediate stem of the flow of alien traffic by my place from 200 to 300 visual sightings in a 24 hour period on the week-ends to not one sighting in over a month. I feel Operation Gatekeeper has been a great success in this particular area and I commend all the efforts by your staff and field agents for what I consider a complete success to date.

I find it most difficult to believe an article such as this on the front page of the Union-Tribune could be in such error.

If there is anything I can do to emphasize the importance of continuing your efforts with this operation please do not hesitate to contact me.

Sincerely,

TERRY LINDSEY,  
*Resident, Property Owner & Business Owner.*

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HANKEN CANN ASSAD & CO.,  
*La Mesa, CA, March 1, 1995.*

Congressman BRIAN BILBRAY,  
*Longworth Office Building, Washington, DC.*

DEAR CONGRESSMAN BILBRAY: I want to influence your thinking on Operation Gatekeeper by providing you with information that contradicts the negative image portrayed about it in recent San Diego Union Tribune articles.

I attended a community meeting held last night at the Imperial Beach Border Patrol station. Of approximately 50 people attending, literally everyone had a convincing story to tell about the effectiveness of Operation Gatekeeper in detecting and preventing illegal alien traffic in the South Bay business and residential neighborhoods.

Common examples cited to demonstrate the effectiveness of Operation Gatekeeper included no more barking dogs to disrupt the night's sleep, no more cabs making regular pick-ups of illegals, safer conditions for evening strolls and in my case, a drop from 200 to a handful of illegals passing through our apartment community at night while making their way to Highway 5 North. Even the environmentalists are reporting the best population of endangered species in the estuary due to decreased damage to their habitat.

Operation Gatekeeper is not a one-dimensional tactical strategy as is the El Paso "Hold The Line" strategy. It is a concept that requires constant improvement of the system's faults. The Border Patrol should be provided the tools, technology and manpower, but the process by which they produce the desired results should not be legislated.

Congressman Bilbray, don't hurt the process that has been working by an over-reaction to misinformation about Operation Gatekeeper.

Sincerely,

AL ASSAD, Jr.,  
*Vice President.*

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SAN DIEGO CRIME COMMISSION,  
*San Diego, CA, February 21, 1995.*

Commissioner DORIS MEISSNER,  
*I.N.S., Washington, DC.*

DEAR COMMISSIONER MEISSNER, Several months ago this Commission wrote you outlining the outmoded equipment and associated problems along the San Diego sector. Your letter response was excellent;—the action by your Department was superb. The performance of the Boarder Patrol and the value of Operation Gatekeeper should not be questioned. It should be applauded. Thank you;—your staff;—your Department.

During early February, this Commission concluded four days of hosting the National Association of Citizen Crime Commissions conference here in San Diego.

Part of the conference included a tour along the San Diego sector of the border. The audience consisted of Executive Directors and members from the Citizen Crime Commissions of several major cities: Chicago, Kansas City, Atlanta, Wichita, Jackson, and Phoenix. The lead-in and on-site terrain coverage was outstanding.

There was a common conclusion reached by all members of this group,—the magnitude of the task is incomprehensible,—and certainly not known by "middle America" and the majority of its Congressional representatives.

Obviously, the need now existing is to bolster the support of INS units and Customs. The domino effect is taking place.

Sincerely yours,

EDWARD B. MEYER,  
*Chairman, Communications Committee.*

Senator SIMPSON. Thank you very much. We have worked many years together and I have great respect and admiration for you. I appreciate your comments about the White House, and I guess I was tinged by the absurd way they handled the Jordan Commission report. That was just inept and bizarre, so I will get that out of my head now and remember what I had to do in my immigration work, too. I had to go to Ronald Reagan and I had to go to George Bush to get my bill through because down underneath there were a lot of people from California in the first administration who weren't very pleased with what I was up to.

Then in the latter one, my friend George Bush would go over the top of it all for me. So I had to do that, and that was the frustrating part. But down below, I was always getting cut to ribbons, except with Attorney General William French Smith. There were not a lot of people excited about what I was up to in those years.

So it is good to know that about our President. I have visited with him, too, and will do so again from time to time. I think he does have an interest in immigration, coming from Arkansas—where there were serious problems at one time that affected the political landscape. So I understand that, and we will work with him.

Now, Shirley Chater, our Commissioner of the Social Security Administration.

#### STATEMENT OF SHIRLEY S. CHATER

Ms. CHATER. Thank you, Mr. Chairman. I am pleased to be here to talk with you about ways that the Social Security Administration can help to reduce illegal immigration.

You indicated in your letter of invitation that you would like to hear about employer verification, and I would like to talk with you about that today. I would also, because of your letter, like to address the death registry that is maintained by the Social Security Administration, and also talk a little about the aliens who receive some public assistance on our SSI program.

I would first have you know, of course, that Social Security plays a very important role in ensuring that only those people who are authorized to work in this country are actually allowed to work, and our primary role in this regard is to conduct verification of Social Security numbers.

Now, by SSN verification, I mean the process by which Social Security determines whether a name and a Social Security [SS] number match SSA's records. It needs to be said here that it is impossible for SSA to determine whether the person who is presenting the name and the Social Security number is, in fact, the same person to whom the Social Security number was issued. It is impos-

sible because the Social Security card has no personal identifying characteristics.

Now, verifying Social Security numbers for employers is an important aspect of what we do. Employers routinely call our 800 number or drop into or call our local field offices and ask us to verify the Social Security number of a job applicant, and we can tell the employer whether or not the name and the card match our records.

We are, of course, as concerned as you are about making sure that our Social Security cards are as counterfeit-resistant as we possibly can make them, and we have done a whole lot since 1983. In particular, we use bank note paper, making them resistant to counterfeiting because there are symbols on the card that make it very difficult to erase or change the background, for example. The new cards, if you have seen one, have some raised lettering on them which you can feel, and all of these features, including some confidential markings on the card, make it a high-quality card, tamper resistant.

We also have put programs in place to maintain the integrity of the process by which we give a card to a new applicant. We now have a program that we refer to as enumeration at birth. We hope that every child, when born, will have a card, thereby preventing the use of birth certificates as time goes on to give someone a card who perhaps shouldn't have one.

Another way that we maintain the integrity of our system is to do intense interviews of anyone who comes to us over the age of 18 because we don't know how they would get along in this country that long without a Social Security card. So if someone should come to us at that point, we do extensive interviews and ask for identifying documents to be very sure that this is indeed the first time they have requested a number.

I wanted you to know the steps that we go through to maintain the integrity of our Social Security card and numbering system because eventually we hope to implement, with the INS, a pilot project that comes from the Jordan Commission recommendations that would utilize this verification of the Social Security number as part of a work authorization pilot.

Now, very quickly, Mr. Chairman, let me discuss the death registry which you asked about. We do have a death registry, and I share your concern that any verification system that is dependent upon validation is vulnerable and we need to keep track of deaths to the extent possible. What we do is collect as many death notices as we can from a variety of sources. We at the present time have 48 million death records, 5 million of which have come to us from State registries. The rest have come to us from a variety of sources—funeral parlors, relatives, et cetera.

Before we can actually utilize the death registry, we have to pay attention to two concerns, the accuracy of the information and the confidentiality of the data involved. We want to work with you on those issues of accuracy and confidentiality and see how we can actually put into place some suggestions for improving the death registry that we do keep.

My time is up, sir.

[The prepared statement of Ms. Chater follows:]

## PREPARED STATEMENT OF SHIRLEY S. CHATER

Mr. Chairman and Members of the Committee: I am pleased to be here today to discuss proposals to reduce illegal immigration and to control financial costs to taxpayers. Let me state at the outset that the Administration shares your concern about the cost of illegal immigration. In fact, the Administration has already taken a number of steps to address this issue, and I will go over them in some detail in my testimony today.

As you requested, I will also address the pertinent provisions of S. 269, "The Immigrant Control and Financial Responsibility Act," particularly as it relates to the system to verify eligibility to work and to receive Supplemental Security Income (SSI). In addition, as you requested in your letter of invitation, I will review the death registry maintained by the Social Security Administration (SSA).

Before I talk about these particular issues, however, let me lay the foundation for our discussion today by briefly outlining the historic function of the Social Security card and number. I will then talk about our "Enumeration at Birth" initiative, which helps to deter fraud. Following that, I will describe the way in which false documents can be used to impede the security of Social Security cards.

These issues help lay the framework for my discussion of the use of Social Security cards for work authorization, and SSA's role in verifying Social Security numbers. Before leaving this subject, I will also describe pilot projects designed to enhance verification of a new employee's authorization to work in the United States.

Following my discussion of the employment eligibility-related topics, I will address concerns about aliens who are eligible for Supplemental Security Income (SSI), as well as some actions that already have been taken to address those concerns. Finally, as you requested, I will discuss the potential impact of your bill, S. 269.

## HISTORY OF THE SOCIAL SECURITY CARD

Let me give you some background on the Social Security card. At the time the Social Security card was devised in the 1930's, its only purpose was to provide a record of the number that had been issued to the individual so that the employer could accurately report earnings for the individual. That is still the primary purpose for which SSA issues the card. It was never intended to serve as a personal identifier—that is, to establish that the person presenting it is actually the person whose name and Social Security number (SSN) appear on the card. Although we have made it counterfeit-resistant, it does not contain information that allows it to be used to establish identity. Over time, however, the use of the SSN and Social Security card has greatly expanded, and the card is now used for purposes other than the Social Security earnings record maintenance, including its use as evidence of authorization to work.

Prior to 1971, all SSNs were issued based solely on information alleged by an individual. Because of the expanding use of the card for other purposes, there was concern about the integrity of the card. Beginning in 1971, we required people age 55 and over to provide evidence of their identity. Beginning in 1974, certain categories of applicants were required to provide documentary evidence of age, identity, and alien status. This made it more difficult to obtain a card on the basis of a false identity. However, the card was still no more than a reminder of the number assigned to the individual named on the card. Because of our concern that individuals who had been assigned SSNs for purposes other than work might use the card to obtain unauthorized employment, in March 1974, we began to annotate our records to reflect the fact that an alien had been issued a nonwork SSN. This allowed us to identify, and report to the Immigration and Naturalization Service (INS), instances in which Social Security earnings were reported on nonwork SSNs.

Several years later, the integrity of the SSN process was further improved. Since May 15, 1978, all applicants have been required to provide documentary evidence of age, identity, and U.S. citizenship or alien status. Generally, to obtain an original Social Security card, an applicant must submit at least two forms of acceptable evidence, such as a birth certificate and driver's license. Aliens must submit appropriate INS documents to establish lawful status.

Any alien other than one admitted for permanent residence receives a card indicating either whether he or she is not authorized to work or is authorized to work with the proper SSN work authorization documentation. To obtain an unrestricted Social Security card, they must provide an alien registration receipt card displaying a photograph. This document is issued to aliens by INS.

Applicants for an original SSN age 18 or over are required to have a personal interview. During the interview the applicant is asked for prior names and surnames and the reasons for never before needing an SSN. For those who allege having been born in the U.S., SSA performs additional verification prior to the issuance

of an original SSN because most people born in the U.S. have been issued an SSN by the time they have reached age 18. For instance, SSA verifies the existence of a birth certificate at the State Bureau of Vital Statistics for all applicants for original cards who are over 18, and initiates a search for a death certificate when there is reason to believe the applicant may be assuming a false identity.

#### ENUMERATION AT BIRTH INITIATIVE

The "Enumeration at Birth" (EAB) program was established in 1989 as another means of improving the SSN process. It also is a valuable tool in preventing fraudulent acquisition of an SSN. This program allows parents in the 49 participating States (plus the District of Columbia and Puerto Rico) to indicate on the birth certificate information form whether they want an SSN issued to their newborn child. States provide SSA with birth record information about newborns whose parents want a Social Security card for their child, and SSA then assigns an SSN and issues a card.

Approximately one-half of the original Social Security cards issued in fiscal year 1994 were processed through EAB. With the addition of the State of California's participation in January 1994, representing approximately 15 percent of the national births, we expect a significant increase for fiscal year 1995.

This process greatly reduces the potential for someone to use another person's birth certificate to obtain a Social Security number. For example, individuals who present the birth certificate of a child enumerated under EAB would not be issued an SSN, since our records would indicate that an SSN had already been issued to the child named on the birth certificate. As EAB expands, there will be fewer children without SSNs whose birth certificates could be used to obtain an SSN for another person.

Federal income tax law requires that persons age 1 or older claimed as dependents for Federal tax deduction purposes have an SSN. By 1996, this requirement will apply to all claimed dependents. This has created a strong incentive for individuals to obtain an SSN for their children and also reduces the potential for someone else's birth certificate to be used.

#### FALSE DOCUMENTS IMPEDE THE SECURITY OF SOCIAL SECURITY CARDS

The safeguards which we have built into the SSN issuance process do not guarantee that we will not issue an SSN to the wrong person. This is because the documents which a Social Security card applicant must present—primarily a birth certificate and immigration forms—are relatively easy to alter, counterfeit, or obtain fraudulently.

In 1988, the Office of Inspector General (OIG) of the Department of Health and Human Services (HHS) issued a report entitled Birth Certificate Fraud which examined vulnerabilities to fraud in birth certificate forms and issuance procedures and in procedures of user agencies which receive birth certificates as documentation. The problems found by the OIG included:

False birth certificates are used to create false identities;

An estimated 7,000 local issuing offices issue some 10,000 different versions of birth certificate forms which may be submitted to user agencies for evaluation; and,

States have open access to vital records, and there is lax physical security of blank forms and seals, especially in local offices.

In 1991, OIG issued a follow-up report on efforts to control birth certificate fraud. The relevant finding was that the nature and extent of birth certificate fraud appeared to be relatively unchanged since 1988. OIG reported that major weaknesses in the procedures used by issuing agencies continued to hamper the ability of user agencies, both Federal and State, to rely on birth certificates as evidence of identity. The cost of revamping the system by which birth certificates are issued would be enormous, and while some State and local jurisdictional have initiated reforms, most are severely constrained from making major reforms by increasingly limited resources.

#### SOCIAL SECURITY CARDS FOR WORK AUTHORIZATION

I would now like to discuss the rule of the Social Security card as evidence of work authorization, which is a separate issue from personal identification. As you know, Mr. Chairman, the Immigration Reform and Control Act of 1986 (IRCA) makes it illegal for an employer to knowingly hire anyone not legally permitted to work in the U.S.; that is, aliens not authorized to work by INS. Under IRCA, all employers are required to verify a job applicant's identity and authorization to work. Any of a variety of documents specified in the law and in INS regulations can be

used for this verification, which is required for all employees, regardless of citizenship or national origin. Some of these documents—such as a U.S. Passport—establish both employment eligibility and identity. Others—including the Social Security card—can be used to establish work authorization, but must be accompanied by an identification document, such as a State driver's license.

Originally, the same type of Social Security card was issued to all SSN applicants who requested one, whether or not they were authorized to work. Beginning in May 1982, a legend, "NOT VALID FOR EMPLOYMENT", was placed on the Social Security cards of aliens not authorized to work to identify nonwork SSNs. This was due to the increasing need for persons to have SSNs for nonwork purposes and concern that such persons could use their SSN for work purposes. These non-employment-related Social Security cards are issued to:

Aliens in the U.S. who do not have authorization to work, but who need SSNs for a valid nonwork purpose (such as driver's licenses in some States or bank accounts); and

Certain aliens residing outside the U.S. (for example, dependents listed on U.S. income tax returns or individuals entitled to Social Security auxiliary or survivor's benefits).

With this legend appearing on the card, employers were able, for the first time, to determine whether an individual was authorized to work. Since September 14, 1992, cards with the legend "VALID FOR WORK ONLY WITH INS AUTHORIZATION" have been issued to aliens lawfully in the U.S. with temporary authority to work. Thus, employers are now able to determine if an alien has exceeded the time limit for his or her work authorization by checking the alien's INS document.

#### COUNTERFEIT-RESISTANT SOCIAL SECURITY CARDS

Originally, due to the limited purpose of the Social Security card, no special efforts were made to prevent them from being counterfeited. However, as counterfeiting became a concern, actions were taken to address this problem. For example, legislation enacted in 1983 required that new and replacement Social Security cards be made of banknote paper and—to the maximum extent practicable—be resistant to counterfeiting. The current card incorporates these and a number of other security features. It is now difficult to produce a high-quality counterfeit of these cards.

If the Social Security card were the only work eligibility document, it would have to contain features that would allow employers to easily detect counterfeit cards. Some types of humanly readable security features that make the card more counterfeit resistant are already incorporated in the current Social Security card. However, employers would have to look for them and be trained to recognize counterfeit cards. Under current law, employers are only required to make a good faith effort to ensure that documents are genuine, and they are not required to be document experts. But for the same reason that most of us will accept a counterfeit \$20 bill—lack of experience and expertise in identifying a counterfeit bill—counterfeit Social Security cards may be accepted by employers.

When improved versions of Social Security cards have been developed, they have been issued only to new applicants because of the prohibitive cost of replacing all cards still in use. Thus, there are now 46 valid versions of the Social Security card in use. Approximately 61 percent of active card holders have been issued a counterfeit-resistant card. But, as I mentioned, previous versions are still valid and employers generally have no reason not to accept them.

#### SSA'S ROLE IN SSN VERIFICATION

SSA's primary role in the process of ensuring that only persons who are authorized to work in this country obtain jobs is to conduct SSN verification. By SSN verification, we mean the process by which SSA determines whether a name and SSN match SSA's records, that is, whether SSA issued a given SSN to a given person. This process cannot determine whether the person presenting the name and SSN is, in fact, the person to whom the SSN was issued.

SSA has always had the capability to verify SSNs, which is an important function in ensuring accurate wage reporting and, ultimately, accurate benefit payments. Employers may immediately verify SSNs for payroll purposes by calling our 800-number or local office. This option is also available to employers who want to verify the SSN as part of the employment eligibility verification process. Relatively few employers call for either purpose, however, because they tend not to question the name and SSN provided by an employee. And although this option is available to employers, neither the 800 number nor local offices are equipped to handle large numbers of SSN verification requests.

With the expansion of the SSN's use over the years, especially as a result of widespread dependence on computers, SSA began to experience more and more requests for SSN verification for purposes other than the Social Security program. Many of these requests were from government agencies for the purpose of ensuring the accuracy of other Federal and State benefit programs, and automated data exchange systems were developed to comply with these requests.

One of the systems that was developed to verify SSNs for States is available to employers to verify SSNs for employment eligibility verification purposes. The Enumeration Verification System (EVS), which was designed to carry out SSA's role with respect to the Federal-State Income and Eligibility Verification System (IEVS), verifies SSNs based on data such as name and date of birth. Since the mid-1980's, each State has been required to have an IEVS to match financial information received from public assistance claimants with information in Federal and State data bases so that they can identify claimants who are ineligible or who receive incorrect benefit payments.

Although EVS is used primarily by States, employers may also use EVS to verify SSNs for wage reporting or employment eligibility purposes. However, because EVS consists of a high-volume process, under which the requests are transmitted to SSA by mail on magnetic tape and the results returned to the requestors in about 4 weeks, this system does not allow for immediate SSN verification. Thus, it may not effectively serve an employer's employment eligibility verification needs.

IRCA required the Secretary of Health and Human Services to study the feasibility, costs, and privacy considerations of an SSN validation system for employers. From January 1987 through September 1988, SSA tested a telephone system under which employers in 3 Texas cities requested SSN validations orally and received oral responses from SSA employees who had online access to SSA data bases. The test allowed employers to use existing telephone lines and equipment to request SSN validation of prospective employees from SSA and receive an immediate response. This is similar to an employer's calling the 800-number today, except that the test provided for a special staff dedicated to this specific function.

The test results indicated that, although technically feasible, the effectiveness of an SSN validation system in helping employers prevent aliens not authorized to work in this country from gaining employment would be limited, because there is no way to be sure that the job applicant presenting a valid Social Security card is the person to whom it was issued.

SSA does not verify SSNs for the private sector for purposes other than employer wage reporting and employment eligibility verification. The law and our disclosure policy are designed to protect individual privacy—a fundamental and widespread concern—and the confidentiality of the SSN because of the potential for its use as a means of unauthorized access to personal records.

#### EMPLOYMENT ELIGIBILITY VERIFICATION PILOT PROJECTS

The Commission on Immigration Reform's interim report to Congress in September 1994 proposed a computer registry based on SSA and INS data which employers could check to determine if a new employee is eligible to work. The Commission recommended that the President immediately pilot the registry in the five States with the highest levels of illegal immigration and several other States.

Our SSN data base is highly accurate, and is updated overnight, every night. Since the date base was established to carry out Social Security functions, such as to facilitate wage reporting, the data base and its supporting systems are not designed to support work eligibility verification. To use the data base to support work eligibility verification, we would need to establish new systems and procedures and to make the verification process more convenient for employers.

The Administration believes that worksite enforcement of immigration laws is a necessary and effective means of controlling illegal immigration and promoting fair competition among employers and workers in the United States. The Administration's FY 1996 budget proposal includes substantial new resources to pursue this goal. As a part of this effort, the Administration is seeking to enhance effective verification of a new employee's authorization to work in the United States.

On February 7, 1995, President Clinton announced several major immigration reform initiatives, including expanded worksite enforcement. To improve such enforcement, the President also announced several pilot projects to verify employment eligibility for newly hired employees, as recommended by the Commission on Immigration Reform. The President has directed SSA and INS to develop pilot projects in response to some of the issues raised in the Commission's report and to test the feasibility of matching SSA and INS records in the future. We believe that these pilot

projects will generally accomplish the objectives that the verification projects for which your bill provides are designed to accomplish.

One of the pilot projects is a two-step process using SSA and INS data bases. Current plans call for a number of selected volunteer employers to request verification of employment eligibility by submitting to SSA a newly-hired employee's SSN, name, and a date of birth. SSA would match that information against its data base and would also check for citizenship/alien status coding. If SSA records indicated that the employee was an alien at the time he or she applied for an SSN card, SSA would advise the employer to verify with INS, using the employee's alien identification number, that the employee was authorized to work. Our preliminary plans call for this pilot to be operational on a small scale by early 1996 in one or more geographic areas with high levels of illegal immigration. We expect to expand the pilot to more employers in 1996 and perhaps 1997.

#### DEATH REGISTRY

Mr. Chairman, your letter of invitation indicated an interest in SSA's death registry, which we call the Death Master File (DMF). I share your concern that any verification system that is dependent on SSN validation is vulnerable to the possibility that an individual will assume the identity of a deceased person. Some of the SSN issuance safeguards which I have described, such as Enumeration at Birth and the requirement that new SSN applicants age 18 or older explain why they did not previously need an SSN, have made it more difficult to obtain an SSN based on a false identity, including a deceased person's identity.

We receive reports of death from a variety of sources, including relatives, funeral directors, postal authorities, data matching operations with other Federal agencies, and State vital statistics agencies. The primary reason for collecting this information, and the primary purpose for which the DMF was designed, is to prevent the payment of benefits to deceased persons.

Although we are exploring the use of DMF data for purposes other than ensuring proper payment of benefits, including for employment eligibility verification, it is clear that some issues regarding the accuracy and confidentiality of the data would need to be resolved.

For example, we do not verify most of the death reports which we receive from family members, funeral directors, or postal authorities, nor do we verify death reports for people who are not beneficiaries. For this reason, we recommend that users of information obtained from the DMF independently verify such information before taking an action that would adversely affect an individual.

The law limits the circumstances under which we can redisclose death information which we obtain from a State. About 5 million of the 48 million death records contained on the DMF were obtained from State sources. In general, we can share such information only with States or other Federal agencies, and only for the purpose of ensuring proper payment of Federally funded benefits.

Mr. Chairman, I would now like to talk about concerns regarding SSI-eligible aliens. For purposes of context, let me begin with the growth in the number of aliens receiving SSI.

#### GROWTH IN THE NUMBER OF ALIENS RECEIVING SSI

The number of SSI recipients who are aliens has been increasing steadily. In December 1994, there were a little more than 738,000 aliens receiving SSI benefits. This is double the number of aliens receiving benefits 5 years ago. Alien recipients now constitute nearly 12 percent of the total number of SSI recipients.

To understand this increase in the rolls, we must look at the eligibility criteria for aliens. Under the SSI law, an aged, blind, or disabled individual with limited income and resources, who is not a U.S. citizen, must be either an alien lawfully admitted for permanent residence or permanently residing in the United States under "color of law."

Most persons lawfully admitted for permanent residence are immigrants—that is, they are issued immigrant visas by the Department of State before they enter the United States. Other aliens who are in the United States may be granted permanent resident status by the Immigration and Naturalization Service (INS), either because they are eligible for available immigrant visas or they have had certain immigration statuses—such as refugees and asylees—that allowed them to attain lawful permanent resident status after specified time periods.

Those "permanently residing in the United States under color of law" (PRUCOL) are members of a broad category of immigration statuses. The original SSI legislation gave as examples of PRUCOL those aliens who have refugee or parole status. But in 1985, a Federal court ruling (*Berger v. Heckler*) increased the number of cir-

cumstances beyond those then specified in SSA regulations in which a person was to be considered PRUCOL. As a result of the *Berger* court's decisions, we now include 16 specific immigration statuses of aliens who are considered PRUCOL and a general category that includes as PRUCOL any aliens whom the INS knows of, permits their presence in the country, and does not contemplate enforcing their departure. In December 1994, nearly 14,000 aliens received SSI because they were in one of the immigration statuses added by the *Berger* court's expansion of PRUCOL.

#### CONCERNS ABOUT SSI PAYMENTS TO ALIENS

Mr. Chairman, we understand the public's concern about the growth in the number of aliens on the SSI rolls, particularly in this time of limited Federal resources. But before addressing this legitimate concern, let me correct one misconception—namely, that "illegal" immigrants are receiving SSI benefits. In fact, aliens who are in the United States without the knowledge and permission of the INS cannot be eligible for SSI.

To ensure that illegal aliens do not collect benefits, we verify every SSI applicant's citizenship or immigration status through a variety of procedures. For instance, to verify U.S. citizenship, our field offices look at birth or baptismal records, U.S. passports, naturalization papers, or other documents reflecting U.S. citizenship. In the case of aliens who allege that they are lawfully admitted for permanent residence, SSA requires that they provide documents issued by INS as evidence. The field offices examine the documents using special equipment. If the documents do not contain the otherwise invisible INS codes, or if they appear in any way not to be valid, we verify the documents with INS.

Many of the categories of PRUCOL aliens also have INS documentation of their immigration status, some have court orders allowing them to remain in the United States indefinitely, and others do not have any such documentation. However, in all cases, SSA contacts INS for verification of the authenticity of the documentation or the fact that the alien is known to INS and that INS does not contemplate deporting the alien. Reverification with INS also is done annually for all PRUCOL aliens on the SSI rolls, or more frequently if it appears that an alien's status might change. Thus, we believe we are doing a good job of keeping illegal aliens from collecting SSI benefits.

There is a concern about legal aliens, however, which we share. In the late 1970's there was a great deal of concern that the SSI program was being abused by immigrants who entered the country with the intention of receiving SSI shortly after their arrival.

Under immigration law, any applicant for U.S. immigration who is likely to become a "public charge" may be excluded from admittance for permanent residence. However, persons who otherwise would be excluded from entry into the United States may be admitted if sponsors execute affidavits of support on their behalf. Likewise, persons already in the country who apply for permanent resident status and who do not have jobs are required to have sponsors if the INS determines that they are likely to become public charges. Although immigrants generally have sponsors' pledges to provide financial support, several courts have determined that sponsorship affidavits are not legally enforceable contracts.

#### ACTION TO ADDRESS CONCERN ABOUT ALIENS ON THE SSI ROLLS

In response to concerns about abuse, in 1980 Congress enacted provisions in certain public assistance programs, including SSI, to limit sponsors' shifting their financial responsibilities to the public assistance programs. These provisions—generally known as sponsor-to-alien deemинг—require that, in determining an immigrant's SSI eligibility and benefit amount, a portion of his or her sponsor's (and sponsor's spouse's) income and resources are considered to be the immigrant's. Sponsor-to-alien deemинг under the SSI program currently applies for a period of 5 years after the immigrant's admission into the United States for permanent residence and applies to all lawfully admitted, sponsored immigrants, except for those who become blind or disabled after their admission into the United States.

The effect of the sponsor-to-alien deemинг provision is shown by the fact that fewer than 5,000 aliens with sponsors who were on the SSI rolls in December 1994, came on the rolls before the deemинг period ended. This is only about 1 percent of all aliens lawfully admitted for permanent residence currently receiving SSI benefits.

#### SSI EFFECTS OF S. 269, THE CHAIRMAN'S BILL

Mr. Chairman, now that I have discussed the background on the issue of SSI eligibility for aliens, I would like to talk about the effects of your bill, S. 269.

As we understand S. 269, it would prohibit the payment of SSI benefits—as well as benefits under any other Federal, State, or local program of means-tested, needs-based assistance (with several specified exceptions)—to any alien who does not meet the bill's definition of an "eligible alien." An "eligible alien" would be an individual who is lawfully admitted for permanent residence, an asylee, a refugee, an alien whose deportation is withheld under section 243(h) of the INA, or a parolee who has been paroled for a period of 1 year or more. The effect of the provision would be the immediate removal of most of the individuals who are now on the SSI rolls because they come under one of the categories defined as PRUCOL by the Berger decision.

S. 269 would require that the income and resources of an alien's sponsor and the sponsor's spouse would be deemed to the alien for purposes of determining eligibility and benefit amounts until such time as the alien achieves U.S. citizenship. (This provision differs from current-law deeming in that it would deem the entire amount of a sponsor's income and resources to the alien without allocations for the sponsor, his spouse, and dependents.) Since most sponsored immigrants currently do not come onto the SSI rolls until their deeming periods end, the effect of the provision would be that almost all sponsored immigrants would not be eligible for SSI until they become U.S. citizens.

The bill also would make sponsors' affidavits of support legally enforceable for 10 years after the alien last received any benefits. If an alien receives SSI benefits, the Federal Government could enforce the contract and take action to recover the amount of assistance provided to the alien. In addition, any alien who receives more than 12 months' worth of SSI benefits within 5 years after entry would be considered a "public charge" and, thus, potentially deportable by the INS.

It appears that the bill would require deeming until an immigrant becomes a United States citizen even in cases in which the immigrant may have completed his or her deeming period and has been receiving benefits for a number of years. This would mean that immigrants who had played by the rules, been in the United States for many years, worked, and paid taxes, but who are not yet citizens, would be removed from the SSI rolls. For example, we know that slightly over 20 percent of the immigrants on the SSI rolls currently receive Social Security benefits—an indication that they have paid taxes for at least 5 years. It is also likely that some of the sponsored immigrants served in the United States armed forces.

Generally, we believe that proposals that would make the affidavit legally enforceable would strengthen the sponsors' obligation and decrease the number of immigrants applying for SSI. However, we note that the provision in your bill, while it would allow the Federal Government to recover from sponsors SSI benefits paid to immigrants, in cases where the sponsors' incomes and resources preclude SSI eligibility it would not provide immigrants themselves legal recourse against their sponsors when they fail to live up to their support agreement. We believe that the threat of deportation for being a public charge also would reduce the number of SSI applications from immigrants. However, such effect likely would be minimal in comparison to the number of immigrants who would be kept off of the SSI rolls under an extended deeming period.

#### CONCLUSION

In closing, Mr. Chairman, I appreciate the opportunity to be here today to discuss ways to control the impact of illegal immigration in the workplace. Today, I have described a number of actions the Administration has taken to address this important concern, as well as the potential impact of your bill, S. 269.

I look forward to working with you to improve the employment verification process, and to explore proposals that would strengthen the sponsor's financial obligation to those persons they bring into the United States.

Senator SIMPSON. That is a fascinating issue to me about the registry of birth and death. It seems to me we could get there.

Now, Dr. Martin, please.

#### STATEMENT OF SUSAN MARTIN

Ms. MARTIN. Thank you. I wanted to thank you for this opportunity to testify before you today on behalf of the U.S. Commission on Immigration Reform. The Commissioners deeply appreciate the support that this committee has provided on a bipartisan basis.

Professor Barbara Jordan, our Chair, not only regretted that she could not be with you personally today; she also instructed me to offer the Commission's assistance to the subcommittee in any way we can be helpful as you move forward through these hearings and the development of legislation.

Because I have submitted a full written testimony, let me sum up a few points regarding the Commission's proposals as they relate to the legislation that has been introduced. Let me begin by saying that no solution to the problem of illegal immigration is going to come cheap. The Commission does consider illegal immigration to be an issue of some urgency. It is a problem for two reasons. It undermines our commitment to legal immigration; it also undermines our commitment to the rule of law. Additional resources will be needed in order to have an effective response to this problem. There are no panaceas, no easy approaches that we could take, but a combination of strategies into a comprehensive approach should work.

There are four principal parts of the Commission's report that I want to highlight today because of their relationship to the legislation you are considering. First is improved border management. The Commission believes that the best strategy is to prevent illegal entries on our borders—this is our land borders and our airports and our sea ports of entry—and facilitate legal crossings. Legal crossings are in the national interests of the United States.

This means having both more Border Patrol officers, resources for infrastructure, for technology, and for all of the supports that we need on our borders, as well as increased resources for inspectors at our land ports of entry in order to reduce the waiting time that we have heard about already. The Commission does recommend a land border user fee as the most promising approach for funding the needed improvements, and I would be happy to further discuss with you the specifics that we suggest be considered.

The second part of our proposals deals with reducing the job magnet. Better border management is necessary, but not sufficient. One-half of the 300,000 illegal aliens who come to stay every year are visa overstayers. No amount of border enforcement can address that half of the problem—people who enter legally and then do not leave when they should, primarily because they find jobs.

The Commission is convinced that a major flaw in our ability to control the employment of illegal aliens is a faulty verification system. The system we have now is doubly flawed. It does not do what it is supposed to do, deter the employment of illegal aliens. What it does do we don't want; namely, burden businesses with paperwork, while creating abundant opportunities for fraud and forgeries. It may even provide an excuse for, if it does not actually provoke, discrimination against workers who happen to look or sound foreign. You heard from Senator Feinstein about the proliferation of counterfeit documents. We found the same thing.

The second flaw in the current verification system is that it relies on self-attestation. Workers are asked if they are a citizen or an alien. There is absolutely nothing to stop an illegal alien from claiming to be a citizen and then presenting a counterfeit driver's license and Social Security card. So we have to have an approach that is comprehensive in addressing that issue.

Again, I would be happy to discuss the details of our proposal for verification. We believe the most promising option is a computerized system that would not rely primarily on documents as the mechanism for verifying authorization. Documents can be counterfeited. It is much harder to use fraud to get past an electronic verification system. We are pleased that the administration is already taking steps in that direction.

The third part of our comprehensive strategy involves the removal of those who are here illegally. Criminal aliens should be our first priority. We are working on a report that we hope to have by the end of this year dealing with other aspects of the removal system. We are concerned that there are far more final orders of deportation now outstanding than there are actual removals, and we need to somehow get from the process of determining deportability to actually deporting people in a more efficient way.

And, fourth—and I will end with that—part of our recommendations is for more consistency between our immigration policies and our public benefits policies. Legal aliens being eligible for very few programs, only those of an emergency nature, that which is in the public health and safety interest, and what is constitutionally protected—legal aliens should retain eligibility for safety-net programs, but we must do a far better job in enforcing public charge provisions and making the affidavit of support legally binding.

We look forward to continuing to work with you. We are deep into our discussions now on legal immigration. We hope to have recommendations to you by June so that we can share those with you at that time and then produce our actual report thereafter.

Thank you.

[The prepared statement of Ms. Martin follows:]

#### PREPARED STATEMENT OF SUSAN MARTIN

Mr. Chairman and Members of the Subcommittee, on behalf of Professor Barbara Jordan, our Chair, and the members of the U.S. Commission on Immigration Reform, I want to thank you for this opportunity to testify.

In our first report to Congress last fall, entitled "U.S. Immigration Policy: Restoring Credibility", the Commission sought to recommend a comprehensive strategy. We chose to focus much of that report on measures to control illegal immigration, because growing frustration about it undermines our first commitment to legal immigration in the national interest.

S. 269, introduced by the Majority Leader on behalf of Senator Simpson, tracks the Commission recommendations closely in many areas that are critical to a comprehensive approach—worksite verification, increasing penalties for alien smuggling and document fraud, border management, and bringing eligibility for public assistance into line with the goals of our immigration policy.

The Commissioners deeply appreciate the support which this Subcommittee has provided, on a bipartisan basis, to the Commission. Professor Barbara Jordan, our Chair, not only regretted that she could not be here personally today, she instructed me to offer the Commission's assistance to the Subcommittee in any way we can be helpful as you move forward with this legislation.

In this testimony, I will summarize the Commission's comprehensive approach and then provide greater detail, as requested by the Subcommittee, on one of its key recommendations: worksite enforcement.

The Commission's comprehensive strategy is as follows: First, the Commission recommends better border management. Far more can and should be done to meet the twin goals of border management: deterring illegal crossings while facilitating legal ones. We have to recognize both goals.

The Commission endorses prevention as the principal strategy to use in deterring illegal entries. We applaud the efforts of innovative Border Patrol leaders such as Silvestre Reyes with Operation Hold the Line in El Paso. Operation Hold the Line demonstrated that a strategic use of personnel and technology can combine at our

land border, as it has for many years at our airports, to reduce unauthorized crossings.

The Commission also recommends a border crossing user fee to help facilitate legal entries. Many people who are authorized to cross the border legally simply tire of waiting in line, and cross illegally. This situation occurs because we have too few inspectors, too few ports of entry and too little infrastructure to handle the daily traffic across the border. We believe that a carefully crafted user fee can help provide the resources needed to speed the process while still protecting the country from illegal entries.

Let me make it very clear: A border crossing fee should not go into the general treasury. It should not go into the general INS or Customs fund. It should be used solely to facilitate the traffic flow through the land ports of entry—to inspect and speed on their way as quickly as possible those who have proper authorization to enter, and to identify and deter those who do not.

The second part of our strategy is worksite enforcement. I will return to these recommendations.

Third in our recommendations for a comprehensive strategy is making eligibility for public benefits consistent with our immigration policy. Decisions about eligibility should support our immigration objectives. Accordingly, the Commission recommends against eligibility for illegal aliens except in most unusual circumstances—when there is an emergency need, the services are in the public safety and health interest (such as immunizations and child nutrition programs), and those that are Constitutionally protected.

The Commission recognizes that even with a narrowly construed eligibility for services, illegal immigration presents states and localities with fiscal impacts. Incarceration of criminal aliens, education and emergency health care all pose financial dilemmas. The Commission agrees that the federal government should help alleviate these costs. The best way to do so is to reduce illegal immigration. In addition, we believe that some financial reimbursement of costs to states and localities is justified, contingent on accurate data, appropriate cooperation of states and localities with enforcement of immigration laws, and a plan to ensure that funding will be reduced as levels of illegal immigration are reduced. We recommend immediate reimbursement of criminal justice costs, because these conditions can now be met, but we urge further study of the costs of health care and education before impact aid is provided.

In contrast to our recommendations on illegal aliens, the Commission recommends that legal permanent residents should continue to be eligible for the safety net programs available to U.S. citizens. We recommend against any broad, categorical denial of eligibility for public benefits based on alienage for those who obey our laws.

This is not to say that the Commission would have legal permanent residents become public charges. We believe that the public charge provisions should be strengthened to permit deportation of immigrants who make sustained use of public assistance during their first five years after entry. We also recommend that the affidavit of support be legally binding on sponsors. Let's put responsibility where it should rest—with those who petition for the admission of immigrants and who owe an obligation to the taxpayers of this country to ensure that their charges do not become public charges.

Fourth, deportation is crucial. Credibility in immigration policy can be summed up in one sentence: Those who should get in, get in; those who should be kept out, are kept out; and those who should not be here will be required to leave. The top priorities for detention and removal, of course, are criminal aliens. But for the system to be credible, people actually have to be deported at the end of the process. The Commission will have additional recommendations on this crucial matter later this year.

Fifth, emergency management. Migration emergencies such as we have seen recently with Haiti and Cuba do recur, and we must be prepared for them. Again, we will have detailed recommendations on migration emergencies.

Sixth, reliable data. The current debate over the economic impact of immigration is marked by shaky statistics, flawed assumptions, and an amazing range of contradictory conclusions from what ought to be commonly-accepted methods. Rather than attempt to choose sides in this discussion, the Commission has asked the National Academy of Sciences to establish an expert panel that will analyze the methods used for evaluating immigration impacts and come to its own conclusions about the available data. We will share their interim results with you as we receive them.

Seventh, much as we support enhanced enforcement by this country, we must face the fact that unilateral action on the part of the United States will never be enough to stop illegal immigration. Immigrants come here illegally from source countries

where conditions prevail that encourage or even compel them to leave. Attacking the causes of illegal migration is essential and will require international cooperation.

To return to the Commission's proposals on worksite enforcement: Let me sum up the Commission's reasons for proposing that we develop a better system for worksite verification. Reducing the employment magnet is the lynchpin of a comprehensive strategy to reduce illegal immigration. Illegal aliens are here for jobs. That is the attraction. So the only effective way to deter illegal immigration must include the worksite.

Better border enforcement is necessary, but not sufficient. Visa overstayers make up fully half of the influx of illegal aliens, 150,000 out of 300,000 who take up permanent residence here illegally every year, on top of an illegal population that exceeds 4 million already. No amount of border enforcement can solve that half of the problem—the people who enter legally, and then do not leave when they should.

We simply must develop a better system for verifying work authorization. That is central to effective enforcement of employer sanctions.

The system we have now, the I-9 process, is doubly-flawed. It does not do what it was supposed to do, namely deter the employment of illegal aliens. What it does do, we do not want—namely, burden businesses with paperwork, while creating abundant opportunities for fraud and forgeries. It may even provide an excuse for, if it does not actually provoke, discrimination against workers who happen to look or sound foreign.

Honest employers are caught between the proverbial rock and a hard place. Because the system is based on documents, employers are placed in a position of making judgments many do not feel qualified to make.

Identifying forgeries is difficult, even for trained professionals. If an employer accepts false documents presented by an unauthorized worker, that employer is vulnerable to employer sanctions for having hired someone under false pretences, regardless of the fact that they may well have been fooled themselves. Yet if an employer chooses to doubt particular documents, and asks for more from some workers and not from others, that is discrimination.

The Commission believes that we must develop a better system of worksite verification, and that the way to do it is through pilot testing. After examining a wide range of alternatives, the Commission concluded that the most promising option for secure, non-discriminatory verification is a computerized registry based on the Social Security Number.

For decades, all workers have been required to provide employers with their Social Security Number. Depending on the results of pilot projects that are now being designed, the cumbersome I-9 process, with its dozens of documents and blizzard of paper, could be replaced by a single electronic step to validate information every worker must already provide.

The Commission examined the Telephone Verification System, called TVS, which the INS has been testing. We are aware that the INS will expand this system, first from nine to 200 sites, and eventually to 1,000 sites. We support this INS effort—but only as an interim measure. It is not the solution.

The fatal flaw in the TVS system is that it ultimately depends on self-attestation. Workers are asked whether they are citizens or aliens. It is simply not sound law enforcement to rely on lawbreakers to tell the truth.

The Commission also looked at the feasibility and effectiveness of reducing the number of documents used in verification. Again, we support such efforts as interim measures. But the fatal flaw here is the vulnerability of all documents to counterfeiting. We heard expert testimony that any document, even the most tamper-proof ones, can be forged so well that only experts can identify the fakes. Employers cannot be expected to identify counterfeit documents.

The Commission believes electronic validation of the Social Security Number is the most promising option because it holds great potential for accomplishing the following:

*Reduction in the potential for fraud.* Using a computerized registry, rather than relying on documents, guards against counterfeits.

*Reduction in the potential for discrimination.* All workers must present the same information to be validated.

*Reduction in the time, resources and paperwork spent by employers in complying with IRCA.* INS employees who now chase paper could be redirected to chase down those who knowingly hire illegal workers.

The Commission did not try to micromanage implementation of this recommendation in advance. We deliberately did not spell out precisely how the software of the registry would be designed, although we did specify that just six pieces of information seem necessary: name, Social Security Number, place and date of birth, mother's maiden name and status code. Nor did we limit the innovation that might be

applied in pilot projects to test the registry. But we did speak to some of the most important aspects.

First, focus on those areas with the largest numbers of illegal aliens. The Commission recommends that pilot projects be undertaken in the five high-impact states—California, Texas, Florida, New York and Illinois. We also recommend that, in time, the pilots should be extended to several less-affected states. But we did not recommend that the registry be tested throughout all of the five states immediately, nor even in all of any one of the states. Pilot projects should start small. Before going to the next phase, we should have results to guide us.

Second, there must be objective, systematic evaluation of the pilot programs. We hope that this Committee will add its voice to this recommendation. The Commission expects to have meaningful results from the initial phase of pilot testing by 1997. We will incorporate these results in our final report to Congress, so that we can make an informed recommendation on whether that system should be implemented nationwide, with particular attention to civil liberties and privacy concerns.

The features of pilot programs should include:

*A means by which employers will access the verification system to validate the accuracy of information given workers.* We received conflicting testimony about the best way to ascertain that a new hire is who he or she claims to be. Some believe that the tamper-resistant driver's licenses now being issued by many states can do the job; others strongly advocate testing a more secure Social Security card.

But it is also possible that electronic validation through a telephone system would require no document at all. Every ATM system uses a PIN number to protect our money. We should test to see if personal information, such as the mother's maiden name and date of birth, that is already part of the Social Security database, can serve the same function for worksite verification.

*Measures to ensure the accuracy of the necessary data.* Improvements must be made in both the INS and Social Security Administration databases to ensure that employers have timely and reliable access to what they need. Frankly, no one can be opposed to improving the reliability of the data in these agencies. There is no protection of liberty in government error.

*Measures to ensure against discrimination.* One key to the Commission's recommendation is that employers would no longer have to ascertain whether a worker is a citizen or an alien, native-born or an immigrant. All workers would have to present the same information to be validated.

*Measures to protect civil liberties.* Explicit protections should be devised to ensure that the registry is only used for its intended purposes. The Commission believes that electronically validating the Social Security Number could be used to ascertain eligibility for public benefits, without damage to civil liberties, because everyone receiving public assistance must already present a Social Security Number just as they do for work. But the registry is not to be used for routine identification purposes, and there must be penalties for inappropriate use of the verification process. The Commission's unanimous, unequivocal view is that no one should be required to carry a document and produce it on demand to prove their right to be here.

*Measures to protect privacy.* Explicit provisions must also be built into the system to safeguard individual privacy. The information contained in the registry will be minimal, given its limited purpose. But the Commission is aware that while access to any one piece of information may not be intrusive, in combination with other information it can lead to privacy violations.

*Estimates of the start-up time and financial and other costs.* The Social Security Administration made preliminary estimates for the Commission of its cost for pilot projects: \$4 million over the first two years for design and development; and annual costs of maintenance and operation of \$32 million. Discrepancies referred to the Social Security Administration were estimated to cost \$122 million initially, and \$30 million per year thereafter. So the total cost of the registry over five years, according to the Social Security Administration, would be approximately \$300 million.

By way of comparison, the Urban Institute estimates that illegal aliens cost seven states more than \$2.1 billion a year. Spending \$300 million over five years to save \$2 billion each year is a sound investment.

But the INS cost must be added to the SSA estimate. The Clinton Administration's latest budget request calls for \$28.3 million for verification systems pilots, although this also includes the expanded TVS program. The bulk of the INS cost, however, will be cleaning up their own data, which should be done regardless of the pilot projects to improve worksite verification.

*Specification of the rights, responsibilities and impact on individual workers and employers.* In particular, the Commission recommendation for false negatives is that no one—no one—should be fired if their employer does not get a validation code from the registry after hiring. It is entirely possible that a new hire has merely given their Social Security Number wrong. There is no one who has a greater incentive to correct errors, whether they are at the INS or the Social Security Administration, than a legitimate worker who has just learned from the registry that there is a problem. Speaking as someone who pays into the Social Security system, I want to be sure that the number I have been using is correct—and has not been misappropriated by an illegal alien.

*A plan for phasing-in the system.* Pilot projects should test various methods for phasing-in improvements in worksite verification, according to the test results.

An evaluation of pilot program results with these criteria must include objective measures and procedures to determine whether current problems related to fraud, discrimination and excessive paperwork requirements for employers are effectively overcome, without imposing undue costs on the government, employers, or employees. The evaluation should pay particular attention to the effectiveness of the measures used to protect civil liberties and privacy.

The Commission also recommends reducing the fraudulent access to so-called “breeder documents,” particularly birth certificates, that can be used to establish an identity in this country. We recommend these steps:

A standardized application form for birth certificates.

Interstate and intrastate matching of birth and death records.

Only certified copies of birth certificates issued by states should be accepted by federal agencies.

Standard design and paperstock for all certified copies of birth certificates to reduce counterfeiting.

Encouraging states to computerize birth records depositories.

The Commission further recommends imposition of greater penalties on those producing or selling fraudulent documents. RICO provisions to facilitate racketeering investigations should also cover conspiracy to produce and sell fraudulent documents.

Those are the Commission's recommendations on worksite verification.

Let me add one more note about worksite enforcement. While improved verification is essential, there are interim steps that can be taken to reduce the magnet that jobs present for illegal aliens. The Commission recommends:

Enhanced resources for investigation of labor standards violations,

Greater coordination between the Labor Department and INS in enforcement of employer sanctions and labor standards,

More targeted enforcement of employer sanctions on industries with a history of illegal alien labor, and

More pro-active enforcement and anti-discrimination laws.

Together, these and other strategies recommended by the Commission should help make jobs attractive to U.S. workers, while identifying and penalizing employers who knowingly hire illegal aliens.

As you know, the Commission is well along in the next phase of its task, considering the national interest in legal immigration, including categories, priorities, and limits. The key to our work so far has been that, through intense discussions, we have managed to arrive at a bipartisan consensus. We hope to continue that record in a systematic evaluation of what our immigration policy should be in the 21st century. In that effort, we have appreciated this Subcommittee's support and consideration of our work.

I will be glad to answer any questions.

Senator SIMPSON. Thank you very much, Dr. Martin. I think all of us concur that the work of the Commission is impressive, and Professor and former Congresswoman Barbara Jordan is my mentor in what she is trying to do and how she does it. She is a remarkable woman, and saying some very important things that are not always popular. I know that feeling.

But I am curious, and when I get curious I get in a lot of trouble, but to all of you here, what would be your opinion of a Federal statute requiring State and local governments to notify the Social Security Administration of any death within their jurisdiction, perhaps with a copy of the birth certificate of the deceased, checking

Social Security death records before issuing a copy of birth or death certificates?

There must be some way without something that has always been told to me, well, it is too expensive, it is beyond comprehension what we would have to do. Somehow, the gimmickry that goes on in there can be resolved. Tell me how.

Ms. CHATER. Senator, we have at Social Security a contract with virtually every State in the Union for them to submit death records to us.

Senator SIMPSON. A contract?

Ms. CHATER. Yes. We purchase from each State their listing of deaths on a regular basis, so we do have that in place. With that purchase comes a consideration that we agree we will not divulge the information in that particular system, except to State and Federal agencies for the purpose of paying federally funded benefits. So, that piece of it is in place.

Senator SIMPSON. It just seems to me that there is a better way to do this, and I will pursue that. As Senator Feinstein has indicated, I do have my illegal documents here and one of them is a Social Security card, and it looks just as good as any one you could ever imagine. It just looks so good, and there it is. I don't know whose number is on there. It is probably a fake number, and if that was run through the system it would show that I am not the person on this card?

Ms. CHATER. If it ran through the system—

Senator SIMPSON. I mean, if they checked this number, which is not my number—right now this will get me anywhere; this card would work anywhere. It says Alan K. Simpson, but the number is not mine.

Ms. CHATER. It would show up that it was not yours.

Senator SIMPSON. It would say that?

Ms. CHATER. Yes.

Senator SIMPSON. But, meanwhile, I can go about my merry way with this card and get every other advantage of identification with it—and check-cashing and everything else—so long as someone doesn't choose to use the 800 number at Social Security—and few people do because of the delay. Is that correct?

Ms. CHATER. Well, lots of people use the 800 number.

Senator SIMPSON. I know, and because a lot of people use it, there is a huge delay.

Ms. CHATER. Not terribly huge. It depends on the day and the time that you call, and we are working on that, Senator.

Senator SIMPSON. One of the key things, of course, will be a verification system, and then, of course, I have my California identification card here, which is a picture of a very attractive-looking man in his sixties. That is my picture, yes, and then my name and my address in Turlock, CA. I have never been there, but the mayor of Turlock has contacted me—I enjoyed his communique—and gave me honorary citizenship in Turlock.

But it is serious business and we are going to have to do something with verification. I think we can get it done this trip because the old business of a national I.D. and Nazi Germany and tattoos is not an attractive part of the debate, and one that I am not going to tolerate, at least personally. Advocates can come here and do

anything they wish, but when I am out on my own, I am not going to swallow any part of that because I have never suggested that we use a national I.D.

In fact, every bill I have done said nothing in this legislation will indicate any possible national identification card. So, that is going to be the big one. The rest of the things we can talk about here, but I am going to have a special hearing, a special consultation hearing on verification.

Part of my proposal is the land border user fee part of Senator Feinstein's bill, too. Of course, the communities on the border have been very vocal in their opposition to that, but I think we can work toward listening to others and talk about, if you work across the border, \$10 a month, looking at the total amount. I will listen carefully to those things, but I think that border crossers—when they don't pay a user fee, that burden is placed on all taxpayers to patrol that border, most of us who do not live in the border communities and benefit from the local cross-border commerce.

So those are things that we will inquire of, and I am ruminating more than interrogating, and I quit.

Paul.

Senator SIMON. First of all, Commissioner Chater, I noticed you sat through our whole hearing, and you deserve some kind of a special commendation for doing that. You heard a lot more about immigration today than you probably wanted to hear.

When you mention that a person who goes into a Social Security office to get a card has to go through an extensive interview, let's just say I am 18 years old and I walk into the Social Security office at Carbondale, IL. What is asked of me? What do I have to show by way of documentation?

Ms. CHATER. Well, first of all, our employees recognize that it is very difficult to reach the age of 18 in this country and not have a Social Security card. So we first of all ask for identification to be sure that the person applying for the card is indeed who he or she says he or she is, and that requires a birth certificate, for example, or a passport, something that is indeed an identification card or something that identifies one for sure.

If this person were to present, for example, a birth certificate, we wouldn't just accept it because, of course, it could be counterfeit. So we would then contact the State from which that certificate came to check to be sure that indeed a person of this name was born in that community at that time, and therefore verify the birth certificate.

We would also interview this person extensively, asking the kinds of questions that only he or she would know, trying to be very, very sure that the person to whom we give this new number is indeed the person he says he is.

Senator SIMON. Commissioner Meissner, has illegal immigration on our border with Mexico increased because of the recent economic crisis down there, or do you have any way of sensing that?

Ms. MEISSNER. We are beginning to see signs of migration due to the peso devaluation. We do regular interviewing of people that we apprehend and we are now beginning to hear stories of people who have lost jobs as a result of the devaluation or other things associated with the devaluation.

Under any circumstances, these months, January through May, are the heavy months of the year for illegal immigration. These are the months when people come into the country for seasonal employment, so it would be higher than in the fall in any event, but the peso devaluation is starting to have an effect.

Senator SIMON. And if Mexico follows through with the austerity proposals that the President has made down there, that is likely to increase, is that correct, because unemployment is going to be increasing in Mexico?

Ms. MEISSNER. Well, it could. On the other hand, it will make less income available to Mexicans, and much of the migration, at least from the interior of the country, is assisted by smugglers or requires public transportation, and so forth. So I don't want to make any predictions, but we are committed to an effective border enforcement effort. We are bringing substantial resources to the border this fiscal year. Obviously, with the help and support of Congress, we are constantly improving our technology that is available to our Border Patrol staff. We are prepared, we believe, and we are very committed to an increasingly effective border control effort.

Senator SIMON. Senator Kyl asked you about personnel and agents being trained. Do we give priority to someone who is bilingual in the employment process?

Ms. MEISSNER. For Border Patrol, we require a knowledge of the Spanish language. That is part of the 18-week training that all Border Patrol officers go through. If somebody is already bilingual when they come to us, that, of course, makes it a lot easier; I mean, that portion of the training is easy for them. Also, in the Federal Government there are special pay provisions, extra pay provisions, for people who speak other languages.

Senator SIMON. What percentage of the people we are hiring now do you think speak Spanish in terms of southwest border personnel, or Chinese and other languages elsewhere. What percentage of the people that we now employ in the INS are bilingual, would you guess?

Ms. MEISSNER. Well, we have the highest level of Hispanic employment in the Justice Department and one of the highest levels in the Federal Government. Our Border Patrol is almost one-third Hispanic. Now, that is not to say that every Hispanic American speaks Spanish, but a large share of them do. So there is a very substantial ability within the Immigration Service of other languages, and we, in our large cities—Chicago, New York, and so on—have many, many language capabilities on our staff.

Senator SIMON. My 5 minutes is up, but may I ask Dr. Martin just one very simple question?

Senator SIMPSON. Sure.

Senator SIMON. What is your analysis of the border fee idea?

Ms. MARTIN. In looking at the southern border, we were very struck by the fact that the very long waiting lines are harmful for two reasons, that they foster illegal immigration and they also make it a lot harder for us to benefit from the trade, consumerism, and tourism that we really need.

We think also, given the amount of money people pay to be helped across the border, that a nominal border fee is not going to

slow down the potential for people to come back and forth. And if it goes into paying for an increased number of inspectors, keeping open all of the booths at the ports of entry that we currently have, developing new ports of entry in consultation with Mexico and Canada, in fact, we can speed up the process of getting people through legally and end up with a win/win situation.

The key here, I think, is making sure that the money goes very directly back into the inspections process so that the people who are paying the fee can see the immediate payoff to them of having provided those resources.

Senator SIMON. Thank you. Thank you, Mr. Chairman.

Senator SIMPSON. Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

My first question is of Commissioner Meissner. Last week, I think it was, a member of the press asked me a question about your office reorganization and whether it was going to cost 110 positions in the San Diego area. This morning, the Attorney General said that you were putting 46 new Border Patrol by Friday in the San Diego sector.

Is there a reorganization which is costing positions on the San Diego-Tijuana border?

Ms. MEISSNER. The reorganization that I think you are discussing is the proposal that Senator Leahy was referring to earlier. That is a reorganization proposal that deals with our administrative services—accounting, fleet management, personnel, debt collection, files and forms. We now provide those services within the Immigration Service in five locations, and Laguna Niguel is the one that is in California. There also is one in Dallas, in Minneapolis, in Burlington, VT, and here in Washington, DC.

Our staffing for administrative support has remained almost flat for the last 3 or 4 years. We have simply not been able to grow in administrative support positions at the same time that we are growing dramatically in our operational positions, such as Border Patrol and other enforcement personnel.

We have got to find ways of providing administrative support more efficiently and with more consistency, and in ways that support the tremendous growth that is going on within the Service. To do that, we are proposing a centralizing of our administrative functions so that accounting all goes on in one place, personnel goes on in one place, travel vouchers goes on in one place. This concept of centralizing functions is one that we have used very successfully in a variety of ways in the Immigration Service, most particularly where our adjudications work has been concerned in the large service centers.

So the proposal that is presently being discussed with our field staff, where California is concerned, would assign particular functions. The Laguna Niguel administrative support center would remain open. There would be particular functions that would be carried out there for the entire Nation. The largest one would be fleet management, for instance. We would centralize all of our fleet management in Laguna Niguel, and that would change the mix, however, of employees that are presently there.

We have told all of our employees that nobody is subject to losing a job over this plan. We are prepared to move people to other cen-

ters if they want to stay with their jobs. If they want a different job, there are jobs available. In California, we are bringing in the next year more than 500 positions into southern California, and the 100 people, or so, that are in the Laguna Niguel center are eligible to apply for those jobs.

We are committed to maintaining our employee staff and to providing them with opportunities, but we must reorganize the way in which we provide administrative services.

Senator FEINSTEIN. I am just trying to know, are you then removing 110 positions?

Ms. MEISSNER. We are not removing 110 positions. We are reassigning the work that presently those positions are doing.

Senator FEINSTEIN. How many positions will be removed?

Ms. MEISSNER. I will have to check my chart. I don't recall at this moment.

Senator FEINSTEIN. Would you let me know that and we will follow up?

Ms. MEISSNER. Absolutely.

Senator FEINSTEIN. I appreciate it.

Ms. MEISSNER. As I say, they are not employees being eliminated.

Senator FEINSTEIN. I understand what you are doing. I am just trying to know what the bottom line is.

Ms. MEISSNER. I will give it to you.

Senator FEINSTEIN. Thank you very much.

I would like to turn, if I might, to Ms. Chater and ask you this question on a Social Security card. What, in your opinion, would it take to have a verifiable Social Security card?

Ms. CHATER. I think the card that we have now, Senator Feinstein, is certainly counterfeit-resistant, and I suspect—

Senator FEINSTEIN. Was that the one Senator Simpson just held up? [Laughter.]

Ms. CHATER. Well, since I haven't actually looked at his or felt it—

Senator FEINSTEIN. He will pull it out again, I am sure.

Ms. CHATER [continuing]. Or put it through the system, I can't respond to that, but our employees become very sophisticated about how to determine whether a card is counterfeit or not.

Senator FEINSTEIN. But you are saying the newest card is a verifiable, counterfeit-resistant card. Do I understand you correctly?

Senator SIMPSON. You get extra time for that question. [Laughter.]

That is the card.

Ms. CHATER. Yes, I am looking at it. Unfortunately, it has been plasticized, so I can't feel the raised printing in the spots where I know it should be raised.

Senator FEINSTEIN. That is a key, then. So it is not verifiable because most of them are being—

Ms. CHATER. Well, it isn't the card that is verifiable. It is the number to whom it has been assigned based on our records that is verifiable. So we wouldn't just take a card—

Senator FEINSTEIN. But supposing there was a name and a number and somebody came in; I am this name, here is my number.

They call in and, yes, we have a Dianne Feinstein with this number, and it is verified.

Ms. CHATER. That is correct, and we would say that number belongs to Dianne Feinstein.

Senator FEINSTEIN. Right, but that is not really—it could be a counterfeit card.

Ms. CHATER. Yes, it could.

Senator FEINSTEIN. I guess what I am getting at is how do you establish—would it take a thumb print, would it take a photograph, would it take a holographic symbol, would it take a special piece of paper? Exactly what would constitute a verifiable—and I left out and I mean to add the word—counterfeit-proof card?

Ms. CHATER. The Social Security card has never been, and was never meant to be, an identification card; that is, it can't prove at the moment that it is your card because it doesn't have your picture and it doesn't have your thumb print and it doesn't have some other biometric feature.

So, for example, in the pilot project that the Jordan Commission is recommending, when we do a verification system it would be a two-step system so that the employer could call the Social Security Administration and say, I have a card here for Senator Simpson with this number. We would simply say the card—that is, the number on the card and the person to whom it was issued match, and if that person was entitled to work, we would tell the employer that that person was entitled to work, hoping that the employer would ask the employee for some identification to prove that he or she was really the owner of the number and the information that was given to them.

Senator FEINSTEIN. Which leads me to question whether the Social Security card should be the vehicle.

Senator SIMPSON. I understand. I think that has always been a question, whether that would be the document.

Senator FEINSTEIN. As opposed to a better document that was able to be counterfeit-proof. Respectfully, there are Social Security cards probably by the hundreds of thousands that are fraudulent in California.

Ms. CHATER. I am sure. The INS cards that are given to legal aliens are much better, based on other testimony that I have heard this month, than the Social Security card because they have a fingerprint—is that right, Doris—and sometimes a picture, or both?

Ms. MEISSNER. Always a picture.

Ms. CHATER. Always a photograph.

Senator FEINSTEIN. Is this the rosita card?

Ms. MEISSNER. The green card.

Senator FEINSTEIN. The green card.

Ms. MEISSNER. Which is now pink.

Senator FEINSTEIN. Right; pink.

Ms. CHATER. So if our two-step pilot, for example, when it is implemented, has a two-step process with the number and the name verified, together with INS verifying the identity based on some biometric symbol, we will perhaps have an effective mechanism for the two systems to work together so that employers can make either one or two telephone calls.

Senator FEINSTEIN. Thank you. Thank you, Mr. Chairman.

Senator SIMPSON. I think that you and I will work together on that. There are so many parts of it because it probably isn't a good system, but the other part of it is people think of the Social Security card as your identifier. You know, show me your Social Security card. It was never intended for that, but that is what people ask.

The costs of revamping the system, you describe as enormous—I am back to birth certificates again—revamping the system by which birth certificates are issued would be enormous. But if there were simply a requirement for a single form on safety paper for checking the SSA database to see if the person whose birth certificate was being sought was deceased, would that be that expensive?

Ms. CHATER. We estimate that, yes, it would be expensive because we have more than 6 million employers and most of those employers have fewer than 10 employees, and at the moment we simply couldn't absorb the extra costs that would come from verifying every single employee in the Nation if we were to go to a full-scale verification system.

Senator FEINSTEIN. Mr. Chairman, could I ask you one quick question?

Senator SIMPSON. Sure.

Senator FEINSTEIN. What was the rationale for not having the green card be the verification document for people here to prove their work identity?

Ms. MARTIN. Could I add a bit of clarification on that, and also correct something in terms of the Commission's recommendation because it gets to this issue?

Senator SIMPSON. Yes.

Ms. MARTIN. The Commission recommended that the Social Security number be the basis, with pilot programs testing whether to use a telephone verification which would include identifying information such as mother's maiden name or date of birth in order to get an identity, not just the Social Security number, as one possibility. A second would use counterfeit-resistant drivers' licenses, and a third type would be a revamped Social Security card which would have identifiers on it.

The reason we didn't suggest using the green card as the basic identifier is because there would be nothing to stop an illegal alien from claiming to be a citizen and thereby not being required to have a green card; that any system that is based on separating people into two groups will end up being immediately subject to fraud as illegal aliens say, well, I am a citizen and here is my Social Security card, which may very well be counterfeit. It also will lead to discrimination because employers will be wary of somebody who looks foreign and is claiming to be a citizen is lying to them.

Senator SIMPSON. The real reason was the aspect of the fact that only a small portion of those authorized to work in the United States have green cards, and then you are getting truly into discrimination. You are talking about that card being issued only to permanent resident aliens, and so that is where that one went. In other words, anything we do is going to have to be presented by bald Anglos like me and people who look foreign. That is the key.

All through these years I have heard the argument, well, the card, or whatever it is that we do, will be asked for only from peo-

ple who look foreign. I said, no, that is not it; it will be asked of everyone. It will be not carried on the person, not used for law enforcement, and will be asked for from everybody at the time of new-hire employment. That is the key and that is where I always go back to; that is where I range back to the home base.

Fifteen years ago, I had literally bales of green cards sent to me. That was the most easily forged and fraudulent document. Anyway, that is part of that, but just a quick question of Doris and then I will be through. If you have another 5 minutes, we are going to start up again at 2. I will win the brass butt award here. [Laughter.]

I am ready to do that, but I think I will stand most of the afternoon here at my post.

Ms. Meissner, do you believe that the total flow of illegals into the United States has been reduced in the last year or two, and by what percent? What is your latest estimate of the number of illegal aliens successfully entering the United States in a year?

Ms. MEISSNER. Well, as you know, the research that we have done on this is based on a variety of ways of measuring, and we believe that there are between 3 and 4 million illegals in the United States and we believe that it has been in previous years growing at a rate of about 300,000 a year.

We absolutely, as we have said earlier in this hearing, are committed to an effective border enforcement effort that reduces that rate. But the crucial point that we, I think, are now debating is the necessity to combine an effective border effort with effective enforcement at the workplace because the reason that people come to the country essentially is for a job, and that magnet has to be reduced.

Now, where the issue of workplace enforcement is concerned, as we know, the crucial element of an effective employer sanctions program is a verification effort that works, and we have not had that. What the administration, of course, is moving forward with is an implementation of the Jordan Commission proposals. We are proceeding to put pilot projects into place that will be testing various verification methods.

We are working closely with the Social Security Administration in this endeavor. The President has made very, very clear that these two agencies are to find ways to make their data systems compatible and to find a method by which verification can effectively be done using the Social Security Administration database and the INS database.

We are also in the legislation that we will be proposing suggesting that the number of documents to be used for verification be reduced to six, and that reduction in the number of documents, we think, is incredibly important because it gives us a very practical way now to begin to deal with the issue of documents.

We would say the passport, the green card, the employment authorization document, State drivers' licenses, Social Security card, and other State identity documents where people don't have a driver's license. Now, those documents—some are very secure documents. The green card and the employment authorization document and the passport are very secure documents, and so they are in good shape.

But it all depends on combining that with a verification method that links into a database, so you have to do both. You have to deal with documents and you have to deal with the database, and we think that the best way to proceed on documents is to narrow dramatically from 29 that are presently in use down to 6 in legislation those that are allowed, and then build the databases that can verify them.

Senator SIMPSON. I think so, and that is what we are going to have a full hearing about, and consultation.

Just a final question to Dr. Martin. You estimate, and this was fascinating, from the Commission that half of illegal aliens are persons who came with visas and then failed to leave. I didn't realize that overstays were ever that figure. You suggest that improved work authorization would help to address this overstay problem.

I would agree, but is work authorization reform enough to eliminate these overstays? Can we realistically attack this problem without some kind of much improved entry/exit system in the United States so we know how many come in and how many go out in documented form? We should.

Ms. MARTIN. Yes. The Commission also does recommend that there be improved exit controls because it is related to this issue, and we are also right now working on a report that we hope we will have to the Congress later this year on the removal of visa overstayers which will have other recommendations in it as to ways to have more effective use of our resources for the removal of those who have no right to be in this country.

So we agree, but we think the first priority still has to be at the worksite because that will prevent the overstays from occurring in the first place, and then at the same time we need to be improving the removal aspect.

Senator SIMPSON. Did you have any further questions?

Senator FEINSTEIN. Yes. Just on the basis, Mr. Chairman, of this hearing where testimony was presented that you really need to have one document for verification that is sort of immigration-released, whether it is a passport or a green card, and one that would be utilized by a citizen that didn't have these, my question to the Commissioner would be, Doris, why don't you just go to two documents, one that is the INS document and one that is the citizen document?

Ms. MEISSNER. You can do that. We are trying to propose the most practical and the fastest route to improvements, and the fact of the matter is that on the noncitizen side we are in good shape on documents, as you say. But on the citizen side, for people who don't have passports there is not a readily available single document. So the notion of going down to a very limited number would be a significant improvement and be a step in the right direction, we think.

Senator FEINSTEIN. But you are still asking an employer to become familiar enough with six documents, which I—

Ms. MEISSNER. It is better than 29.

Senator FEINSTEIN. It is better than 29, but, respectfully, I think it is impossible. I think for every small business employer or people who hire one person, they are never going to be able to be confident

enough in those documents. I mean, if you have one or two, then I think it is a possibility.

Ms. MEISSNER. But if you combine it with a telephone system, if you combine it with a verification method that they simply receive the documents and then get a verification of the Social Security number, you really then do put the employer in a much stronger position.

Senator FEINSTEIN. I would be very doubtful. You know, 5 years we have to wait just for a pilot program.

Ms. MEISSNER. No, that is certainly not what we are saying. I mean, these pilot programs are being mounted as aggressively as we can and still have them work. The expansion, for instance, of the telephone verification system in 1 year from 200 to 1,000 large employers that have multi-State operations is significant.

Senator FEINSTEIN. In my view, respectfully, it is a drop in the bucket when we have 750,000 employers in California alone, and we have to wait and wait and wait. In the meantime, you have no effective sanction.

Ms. MEISSNER. But you can do a lot in—I mean, first of all, we are targeting and, of course, California is an area that is, of course, one of the target areas. Second, fundamentally, this employment occurs in certain limited labor market sectors. So for the enforcement activity, the enforcement activity focusing on the industries that have been habitual offenders makes a big difference.

Senator FEINSTEIN. One last question, Mr. Chairman.

Senator SIMPSON. Go right ahead. I have never had such enthusiastic subcommittee members in 15 years. [Laughter.]

Get right in there.

Senator FEINSTEIN. This is a key question because Gatekeeper keeps coming up. How do we know that attempted crossings haven't gone up with the increase in apprehensions? How do we know that?

Ms. MEISSNER. We are knowing in a variety of ways. We know through our checkpoint figures, for instance. Our checkpoint apprehensions are down 40 percent. That means that there are just considerable—40 percent is a very high number less people that have actually penetrated.

We know because of the automation that we have in the San Diego sector. We are now taking people's fingerprints. We now know who is coming across. We are watching those very same people who were trying 3 months ago in Imperial Beach now showing up in Brownfield.

We have a whole raft of interviews that we have done on the Mexican side of the border, as well as on the San Diego side of the border. We are going to be continuing that interviewing later this spring in Los Angeles to determine what has happened in the neighborhoods and in the labor markets that have traditionally received people.

We are doing a very complex analysis of this and it is ongoing, but we are showing success.

Senator FEINSTEIN. Thank you, Mr. Chairman, and thank you very much to the panel. It was a very interesting morning. I appreciate your staying power.

Senator SIMPSON. Thank you very much. You are very helpful to us and we will be drawing on your good expertise over the course of the year. Thank you again.

We will reconvene at 2:15.

[Whereupon, at 1:20 p.m., a luncheon recess was taken.]

[The committee reconvened at 2:20 p.m., Hon. Alan K. Simpson presiding.]

Senator SIMPSON. We will now continue the hearing on proposals to reduce illegal immigration and control costs, and we will now go to panel 5, consisting of Dr. Michael Fix, of the Urban Institute; Professor Lawrence Fuchs, of Brandeis University; Professor Charles Keely, of Georgetown University; and Professor Mark Miller, whom I didn't greet—it is nice to have you here—from the University of Delaware.

This is a remarkable panel, and I will just say very quickly that I have come to know these people. I will say that Larry Fuchs has been my mentor and my friend through all these years. Senator Feinstein, I commend you to him and him to you if you have questions. I can remember asking the same questions that you asked. Lawrence Fuchs is an amazing man and an amazing resource and a remarkable professor and professional.

Charlie Keely, too; through the years, I have learned to respect his thoughts and views. I have seen them evolve significantly. Dr. Fix and Dr. Miller, I have great admiration for you, also.

If you want to proceed in that manner, we will have Michael Fix. It said "Dr." on here, Michael. Did you see that?

Mr. FIX. I did see that. I was greatly flattered.

Senator SIMPSON. Judicial doctorate. So, my error there. No, it is not my error at all; it is your error. Oh, yes, excuse me.

Five minutes was the time for the testimony, so please proceed. Michael Fix.

#### **STATEMENTS OF A PANEL CONSISTING OF MICHAEL FIX, PRINCIPAL RESEARCH ASSOCIATE, AND DIRECTOR, IMMIGRANT POLICY PROGRAM, URBAN INSTITUTE; LAWRENCE H. FUCHS, PROFESSOR OF AMERICAN CIVILIZATION AND POLITICS, BRANDEIS UNIVERSITY; CHARLES B. KEELY, PROFESSOR OF INTERNATIONAL MIGRATION, GEORGETOWN UNIVERSITY; AND MARK J. MILLER, UNIVERSITY OF DELAWARE**

##### **STATEMENT OF MICHAEL FIX**

Mr. FIX. Thank you, Senator Simpson. I very much appreciate the opportunity to appear before you to discuss Senate 269. I am going to try to be brief because you have Wendy Zimmermann's and my statement, I believe, before you.

As the issue of immigration's costs has grown more prominent, it has become more broadly believed that welfare use among immigrants is widespread, that it is rising rapidly, and that it is concentrated among the undeserving. Our own analysis of welfare use among immigrants at the Urban Institute hopefully sheds a little light on these beliefs.

According to the census, it is true that welfare use among immigrants overall is somewhat higher than among natives, but when we go underneath these aggregate numbers, we see that welfare

use among immigrants is concentrated among two subpopulations, refugees and recently arrived elderly immigrants who receive SSI. These two groups represent about 40 percent of immigrant welfare users, but only about 21 percent of the immigrant population overall.

Refugees, of course, who are fleeing persecution and often arrive without family or employment connections have a strong equitable case for receiving public benefits, and at the same time most of the recently arrived elderly who receive SSI haven't worked enough quarters to qualify for Social Security and for them SSI may represent a bridge to Medicaid, and perhaps more importantly to affordable health insurance.

Taking another look at welfare use among immigrants, when we look at nonrefugees of working age, 15 to 64, we see that it is about the same as it is among natives, but we do see that it is rising and has risen steadily since 1990. Despite this rise, though, immigrants who are poor remain substantially less likely to receive public assistance than natives who are poor.

Now, with these data as background, let me turn next to several principles that have guided our own efforts to weigh differing changes to immigrant eligibility standards, and let me just mention three.

One, which is at the heart of Senate bill 269, is the need to promote self-sufficiency among immigrants and to promote family, not government, responsibility for their support. A second is the need to provide a safety net for immigrants and their sponsors who happen to fall on hard times and require transitional assistance from the public sector.

A third factor which we don't hear much of in the discussions is the need to promote immigrant integration, and this suggests that we might want to draw a distinction between cash transfer programs and human capital investment programs, like job training and education, when we reexamine eligibility for public benefits.

Now, what implications do these trends and principles have for concrete reform principles. They suggest to us that reform efforts can profitably build on the existing scheme of public charge, sponsorship, and deeming, as Senate bill 269 does. But as Senate bill 269 points out, one problem with the current system is that the affidavit of support that a sponsor signs that makes it possible, in the final analysis, for poor immigrants to enter the United States—that affidavit of support is not legally enforceable, and this produces two undesirable outcomes.

First, even when a sponsor abandons an immigrant, his income continues to be deemed or credited to that immigrant, making it exceptionally difficult to qualify for means-tested programs. Second, if the immigrant should then be able to obtain State general assistance, the State has no legal right to demand repayment from the sponsor.

Two changes in the current system could solve these problems. First, when a sponsor reneges, his income would not be deemed to the immigrant. The result would be that needy immigrants will be able to count on a safety net in times of family breakdown and economic distress. Second, by making the affidavit of support binding, public agencies can recoup their payments by dunng immigrant

sponsors. That said, the cost and feasibility of this system need to be examined.

Now, because our proposal would continue deeming requirements, it begs the question, how long should the deeming period last. Should it last 3 years, as is the current case for AFDC and food stamps? Should it last 5 years, as is the case now for AFDC; some longer, finite term of years; or should it last until citizenship? Let me simply make a couple of comments about deeming until citizenship and then close.

First, it seems to us that deeming to citizenship imposes an indefinite contingent liability on sponsors who could be called on to reimburse the State for expenditures made decades after the sponsored immigrant has been admitted.

Second, deeming to citizenship would, in effect, make citizenship the gateway to a wide array of public benefits, creating a distinction between citizens and legal residents that may not be consistent with our historic notions of citizenship. In fact, immigrants have almost all the legal obligations as citizens. They pay taxes and can be drafted in time of war.

Third, making citizenship the passageway to benefits raises the troubling prospect that immigrants will be induced to naturalize as a means of retaining public benefits and not as an expression of their allegiance to the Nation.

Now, one alternative to deeming to citizenship might be to extend the deeming period from 3 to 5 years, and this would bring it into line with the 5-year public charge period, the 5-year period that immigrants must wait to apply for citizenship, and finally the 5-year bar on benefits that has been imposed on immigrants legalizing under IRCA.

Thank you very much.

[The prepared statement of Mr. Fix follows:]

#### PREPARED STATEMENT OF MICHAEL FIX

##### I. PATTERNS OF BENEFITS USE AMONG IMMIGRANTS: WHAT IS THE PROBLEM?<sup>1</sup>

As the issue of the costs of immigration has grown more prominent, it has come to be widely believed that welfare use among immigrants is widespread, rapidly rising, and concentrated among the undeserving. What is the truth of the matter?

It is true that welfare use among immigrants overall is higher than it is among natives. According to the March, 1994 Current Population Survey (CPS), 5.8 percent of the foreign-born use AFDC or SSI compared to 4.5 percent of natives.

Disaggregating the data further, though, reveals that immigrant welfare use is concentrated among refugees and elderly immigrants who receive SSI. These two groups represent 40 percent of immigrant welfare users but 21 percent of the immigrant population. For both refugees and the elderly, welfare use rates far exceed those of natives.

Welfare use among immigrants is also highly concentrated geographically. Sixty five percent of the nation's immigrants who receive AFDC income live in just two states: California and New York. Together they account for 75 percent of spending on AFDC for immigrants.

Refugees have high welfare use rates for reasons distinct from the rest of the immigrant population. For policy purposes, they may therefore need to be considered separately. To begin with, refugees have unusually strong claims to public benefits. This owes to the fact that they are fleeing persecution, often suffer physical or psychological impairments, and often do not have family or job connections. Moreover, to be admitted as a refugee, an individual must meet exacting international stand-

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<sup>1</sup>The following views are those of the author and are not to be attributed to the Urban Institute, its officers, trustees or sponsors.

ards, proving that his or her flight has been spurred by a well-founded fear of persecution. Beyond this, refugees represent a small share of the stock (6 percent) and flow (10 percent) of the nation's foreign born population. Because of their special needs, Congress has determined that refugees should be eligible for public benefits from the time of their entry.

In addition to refugees, welfare use is also concentrated among elderly immigrants who receive Supplemental Security Income (SSI). Immigrants make up 28 percent of the SSI recipients aged 65 and older, but they make up only nine percent of the total elderly population. Many of these elderly immigrants have not worked enough quarters to qualify for Social Security and SSI may be their only source of support. For many elderly immigrants SSI may also represent a bridge to Medicaid and health insurance.

The Social Security Administration reports that about one third of immigrant recipients applied for SSI benefits shortly after the expiration of the three year deeming period needed for resident aliens to qualify.<sup>2</sup> But over half applied after five or more years in this country.

Welfare use (AFDC or SSI) among non-refugee immigrants of working age (ages 15 to 64) is about the same as that of working age natives (5.0 vs. 5.1 percent). However, as recently as 1990, Census data indicated that welfare use (SSI, AFDC, and General Assistance or GA) among working age immigrants—especially those arriving during the 1980s—fell substantially below that of natives.

This apparent rise in welfare use by working age immigrants is probably due in part to the fact that the 2.6 million immigrants who legalized under the Immigration Reform Control Act of 1986 (IRCA) have recently become eligible for public benefits. This group had been barred from most federal benefit programs for five years following their application for legalization. Further, over half of this population lives in California, which has had both a sour economy and relatively generous welfare benefits.

The rise in welfare use among working age immigrants may also be attributable to an increase in the number of legal immigrants enrolling in the SSI disability (versus elderly) program. According to the Social Security Administration, the number of immigrants receiving disabled benefits increased six-fold from 1983 to 1993 from 44,600 to 266,730.

Despite these trends immigrants who are poor are less likely to receive public assistance than natives who are poor.

Finally, despite widely held beliefs to the contrary, illegal immigrants are eligible for—and apparently receive—very little welfare income.<sup>3</sup>

Non-cash benefit programs. Data from the Current Population Survey suggest that immigrants are more likely to receive Medicaid services than are natives (12 percent vs. 7.8 percent) with use again concentrated among the elderly and refugee populations. A substantially higher share of working-age immigrants are likely to receive "Medicaid only" benefits than natives, suggesting that they are both working and poor. At the same time, immigrants overall are about as likely to use food stamps as natives (CBO, CRS, 1994).

In sum, immigrant use of welfare exceeds that of natives, but is highly concentrated among two subpopulations; refugees and the elderly. While welfare use among working age immigrants is comparable to natives, it has risen in recent years.

## II. WHAT PRINCIPLES SHOULD GUIDE REFORM OF IMMIGRANT ELIGIBILITY FOR PUBLIC BENEFITS?

Our recent exploration of the nation's immigration and immigrant policies<sup>4</sup> suggests a number of principles that might animate the provision of public services to immigrants.

<sup>2</sup>The three year deeming period for SSI has subsequently been changed to five years. See, generally, C. Scott, "SSI Payments to Lawfully Resident Aliens," Office of Supplemental Security Income, 1993. (Manuscript).

<sup>3</sup>Services for which undocumented immigrants are eligible include emergency medical assistance under Medicaid and the supplemental food program for women, infants and children (WIC). Immigrants' access to federal welfare programs is monitored by an electronic verification system: the Systematic Alien Verification for Entitlement (SAVE) system. The Supreme Court has also ruled that undocumented immigrant children cannot be barred from public elementary and secondary schools.

<sup>4</sup>See, generally, M. Fix and W. Zimmermann, "After Arrival: An Overview of Federal Immigrant Policy in the United States", W. Zimmermann and M. Fix, "Immigrant Policy in the States: A Wavering Welcome", in B. Edmonston and J. Passel., eds, *Immigration and Ethnicity: The Integration of America's Newest Arrivals*, The Urban Institute Press, Washington, D.C. 1994.

One is the need to promote self-sufficiency among immigrants and to promote family—not government—responsibility for their support. This principle is central if the nation is to retain a liberal legal immigration policy.

A second principle is the need to provide a safety net for immigrants and their sponsors who happen to fall on hard times and require transitional assistance from the public sector.

A third principle is the need to promote immigrant integration. This principle is embodied in policies that temporarily bar most immigrants from receiving welfare and by policies that allow them to enroll on the same terms as citizens in most job training and educational programs. One rationale for sustaining such a program of investment in legal immigrants is their concentration in a few states and cities. Seventy six percent of immigrants live in just six states. Ninety-three percent of immigrants live in metropolitan areas (versus 73 percent of natives). These communities are likely to be hard-hit by public disinvestment in newcomers.

Fourth, a number of fiscal objectives will, of course, guide Congress' examination of immigrants' welfare eligibility. These include limiting social and implementation costs and promoting intergovernmental fiscal equity.

### III. WHAT IMPLICATIONS DO THESE TRENDS AND PRINCIPLES HAVE FOR CONCRETE REFORM PROPOSALS?

These trends and principles suggest to us that reform efforts can profitably build on the existing scheme of public charge, sponsorship and deeming—as S. 269 does.

There is a powerful logic to the current system of sponsorship and deeming that is often overlooked. Under the public charge provision of the immigration laws, immigrants can be excluded from entering the United States if they appear likely to become welfare dependent. But immigrants can overcome the public charge exclusion by have a sponsor sign an affidavit of support. The sponsor's income is then deemed to be available to the immigrant for the purposes of qualifying for three means-tested programs. AFDC, SSI and food stamps. In most circumstances, the sponsor's income is sufficient to disqualify the immigrant from these means-tested programs. Taken together, these mechanisms allow the nation to admit immigrants who may be poor at the time of entry but who have the potential for economic mobility over time.

One problem with the current system, though, is that the sponsor's affidavit of support is not legally enforceable. Thus, even when a sponsor refuses to provide for an immigrant whom he has sponsored, his income continues to be deemed to the immigrant. The immigrant can in some circumstances obtain state General Assistance but the state cannot demand repayment from the sponsor—because the affidavit of support is not legally binding. Thus, under the current system when a sponsor does not uphold his or her promise of support, either the immigrant loses (if he or she is unable to get public aid) or the state loses (when benefits are paid and no reimbursement follows).

Two changes to the current system would solve these problems. First, when a sponsor has reneged on his promise of support, his income should not be deemed to the immigrant. The result will be that needy immigrants will not be denied a safety net in times of distress. Second, by making the affidavit of support binding, the benefit granting agency would have recourse against the immigrant's sponsor and could be compensated for its losses. This would serve three related purposes: (1) it would discipline sponsors who abandon the immigrants they have sponsored; (2) it would protect immigrants who can prove that they are unable to work and have been abandoned by their sponsors; and (3) it would safeguard taxpayers.

But this reform begs the question: how long should the deeming period last? Should it last three years as is currently the case for AFDC and food stamps? Five years as is currently the case of SSI? Some longer, finite term of years? Or should it last until citizenship?

Without providing an exhaustive analysis here, it seems to us that deeming until citizenship raises several issues.

First, it imposes an indefinite, contingent liability on sponsors, who could be called on to reimburse the state for expenditures made decades after the sponsored immigrant was admitted. Sponsors of immigrants who have a difficult time naturalizing, such as the elderly or those with little education, would be especially burdened.

Second, deeming to citizenship would, in effect, make citizenship the gateway to a wide array of public benefits, creating a distinction between citizens and legal residents that may be contrary to our historic notions of citizenship. In fact, immigrants have almost all the legal obligations as citizens: they pay taxes and can be

drafted in time of war. However, deeming to citizenship might keep many from using the services that their tax contributions had supported.

Third, making citizenship the passageway to benefits raises the troubling prospect that immigrants will be induced to naturalize as a means of retaining public benefits and not as an expression of their allegiance to the nation.

One alternative to deeming to citizenship might be to extend the deeming period from three to five years for the welfare programs (SSI, AFDC, and food stamps.) This would bring it into line with the five year period following entry during which an immigrant can be deported for becoming a public charge, the five-year period that most immigrants must wait to apply for citizenship, and the five-year bar on benefits use by immigrants legalizing under IRCA. This would increase the logic and transparency of the current set of rules that govern in this area.

The principal liability of deeming for a period of years in that a share of the immigrant population may simply delay their use of public benefits until the deeming period has run, rather than being diverted from the welfare system altogether. Nevertheless, a five-year deeming period accomplishes the goals of encouraging family and sponsor responsibility, encouraging integration by temporarily barring access to the welfare system, while at the same time balancing these goals against the burden imposed on the immigrant and her sponsor.

A second policy question raised by deeming is how broadly the requirement should be applied. As we stated earlier the requirement is currently imposed in three large federal cash transfer and in-kind programs: AFDC, SSI and food stamps. While deeming arguably makes sense for these welfare programs, it may make less sense in other contexts. Examples might include services aimed at protecting the public health or the health and safety of children. The costs of withholding these types of services may well exceed the costs of providing them. Another might be human capital development programs that provide access to job training or student loans. Denying these services to immigrants may retard later economic mobility. Deeming in Medicaid may also be problematic. While it might be reasonable to expect sponsors to provide food, shelter and income, the costs of paying for health care and even, in some instances, health insurance, can be exorbitant. Deeming may also not make sense in programs that are so small that the costs of administering the requirements outweigh the savings.

Three further design issues apply to deeming generally. First, expanding the deeming period and the programs to which it is applied will aggravate differences between the status of non-sponsored immigrants (who typically enter for employment-related purposes) and sponsored immigrants (who are usually reuniting with their families). It appears that non-sponsored immigrants would be eligible for virtually all federal benefits under this proposal despite the fact that they have no greater equitable claim to them.

Second, a recent survey of state welfare administrators revealed that there is no systematic way for eligibility workers to reliably and readily determine whether an immigrant is sponsored.

Third, the scope of the proposed changes begs the question whether they should be prospective or retroactive. After all, deeming rules represent the terms and conditions of entry to the U.S. and the new rules may be quite at odds with the expectations of many immigrants and their sponsors, especially those who are older and may face difficulties naturalizing.

#### IV. OTHER REFORM OPTIONS: RESPONDING TO PATTERNS OF WELFARE USE

*Focus on Refugee Program.* One supplemental approach to altering the current eligibility rules would be to target a set of reforms to the specific issues raised by high welfare use among refugees and the elderly. Since refugees are concentrated in California and New York, and since their welfare rates are higher in those states than others, examining these state-run refugee resettlement programs may go a long way toward alleviating refugee welfare dependency overall. It could also go some distance to reducing overall welfare use among immigrants nationally.

*Focus on the Elderly.* Because it appears that many elderly immigrants use SSI as a route to obtain Medicaid, use of SSI among immigrants may be reduced if access to public or private health insurance is expanded. One possible approach is to compel them to buy into Medicare.

Senator SIMPSON. Thank you very much, Mr. Fix.  
And now Larry Fuchs, please.

## STATEMENT OF LAWRENCE H. FUCHS

Mr. FUCHS. Yes, Mr. Chairman. This is not the time to establish an Al Simpson admiration society or a mutual admiration society, but I just want to say—and I don't care whether it is in the record or not, but I want to say that I have studied political history all of my adult life and I know what goes on down here, and I know that there are legislators and I know that there are showboats.

We are watching the fruition of 15, 16 years of hard, persistent, honest, open-minded effort to achieve something which is called the deterrence of illegal migration, and we are watching it—as you know well, in my case I come to it from a pro-legal immigration perspective, a pro-civil rights perspective, and a strong pro-civil unity perspective, believing, as I do, in this society having accomplished what is so difficult for most nations in the world to do, and that is a civil rights compact in which we are trying, however badly we may sometimes perform, to protect all persons who live and work legally in this country without any discrimination whatsoever.

Now, your staff asked me to review a little bit of the history of how we got to this point of where we are on the verge, we hope, of establishing a secure, universal, reliable method of linking eligible employees to what we call employer sanctions.

Senator Feinstein, it is an old story that goes back to a hero of mine, Senator Paul Douglas, of Illinois. He began this effort in 1952 when he introduced the first employer sanctions bill at the Federal level, and he did it for obvious reasons. He was concerned about the build-up of an underclass of persons in the work force who would be exploitable, and who would necessarily then depress wages and standards for all persons who are eligible to work, and in some cases, of course, substitute for them on the job and displace them, actually.

But Douglas didn't get very far for a lot of reasons, but the main reason was the power of the employers who employed agricultural labor, and I am sure you know a little bit about that history, too, from your part of the country. He lost in that vote, 69 to 12, something that I hope you all can reverse this time with the 269 Simpson bill, at least 90 percent of it, as I read it.

That history, of course, gave us the Texas Proviso, which specifically exempted employers from the charge of harboring illegal aliens if they employed them. Well, there were economic reasons for that out in California, particularly, and the Southwest. Between 1945 and 1955, 7.5 million acres came into being because of new methods of irrigation and the demand for labor was enormous.

Peter Rodino kept raising the issue, held hearings, and immediately ran into the stumbling block—verification—in 1972. Verification—how are you going to do it; the questions you were asking this morning, and very good questions, about how can we be sure this is the most effective and the most cost-effective way to do it.

Well, it was decided then in the Social Security Administration—much too expensive; they could never do it. So they had to punt, they had to duck, on the issue of verification. Self-attestation became the only idea in town—self-attestation, with all of the vulnerability to fraud and abuse, and its ineffectiveness. James Eastland, chairman in the Senate here of this Judiciary Committee, sitting

where Chairman Simpson is now, was himself an employer of illegal immigrants.

President Ford appointed a Domestic Policy Council. President Carter appointed an interagency committee. Senator Kennedy helped to bring into being the United States Select Commission, on which Senator Simpson and Senator Kennedy sat and worked, and when it came down to crunch time, it was always the problem of verification. The commission voted 8 to 7 that there should be a new, more secure system of verification, but couldn't decide on what that modality should be.

Well, the truth of the matter is we really weren't ready for what is called for in S. 269. The technology is different now, much better than it was 15 years ago when we made our report explaining why this was necessary. It is less costly now, quite a bit less costly—and that has to do with the way in which computerized technology, and so on, changes in relationship to cost as it develops—than it was then.

This is a realistic proposal on the verification side because it sets out a time frame so that people can really establish the pilots; they have to be done very carefully. Here, Senator Feinstein, we have to be very careful not to rush the process too quickly. It is a delicate balance, being sure we get the reliability and the checking and the evaluation to see what is working best, most cost-effective in deterring illegal migration, and most consistent with civil rights and privacy issues. But the framework allows us to do that, so we have here what I think is a quite realistic situation. We can go into the details of it.

I want to say emphatically I disagree, and have for years, with many of my dearest friends in ethnic advocacy communities who have argued, of course, that this is a great danger to civil rights. I do not see it that way. I see it as a protection to civil rights, and I see it as a protection because, first of all, we have had now decades of the abuse of illegal alien labor violating the rights of persons eligible to work. Second, because of the paper trail system we have now, as you heard this morning, I am sure—it is not just a question of it being cumbersome and inefficient; it is a question of it being so easy to violate and so easy to be gotten around.

So I would say there are protections in this bill on the privacy side which I am quite pleased with. This will not be a national I.D. Barbara Jordan and I have been hammering on this point. I speak here independent of the Commission, but I bring her into it because we have worked so closely over the last several months on the U.S. Commission on Immigration Reform. I think we will have a heightened consciousness about privacy rights in this country as a result of this discussion and what we are doing.

Quickly, I agree with what you have got in the bill on resources to process asylum claims, border personnel, alien smuggling, document fraud, and—this is personal; it is not a Commission position—the Cuban Adjustment Act repeal. The Commission did not make a recommendation yet on the period of deeming. I personally agree with Mr. Fix on that issue. I would not have the deeming until citizenship. We can go into that in discussion later and I can explain why. I would say a 5-year period might be better. I like what Barbara's testimony was when she gave it here. She didn't

address the issue of specifically how, but she explained why it would be not wise to hold off until citizenship.

As to benefits, all I can say is it could be improved upon only by having a comprehensive definition of the eligibility of immigrants for benefits. There are four categories. We can discuss that.

On refugees, I urge you to hold off until we can say something in June. We have a major consultation coming up very soon. We are looking at it very hard. This may be the way to go, but I would urge you to hold off and wait until we are ready with that, and Barbara will be ready to testify on that in June.

One last word on wages and hours. There is an effort being made over in the other body to cut down the wages and hours of enforcement people in the DOL. Now, I am finishing. I would be very careful about that because one of the things you may want to be doing very soon in the future, even though this committee doesn't have the strict jurisdiction—Senator Kennedy is involved over in Labor—is the transfer over to DOL, for a great many good reasons, to do that for the enforcement of worksite enforcement. There are all kinds of good reasons to do that, but I would be very careful on this because one thing we want to do is establish the reliable, universal verification system. We don't want to drive people more into the underground economy who are illegal and who will be hard to get at, and we want to do our enforcement job in a comprehensive way.

I know the red light has been on and I am taking advantage of our long collegialship. Thank you very much.

[The prepared statement of Mr. Fuchs follows:]

#### PREPARED STATEMENT OF LAWRENCE H. FUCHS

Thank you, Chairman Simpson. I appreciate the opportunity to testify before this Committee on a matter of great importance and interest to the American people. This really is a case of what Yogi Berra would call "deja vu all over again." He also said: "You can observe a lot by watching."

I have been watching the immigration policy scene closely for a long time. The major provisions of S269 dealing with the deterrence of illegal migration constitute some good ideas whose time has come.

You have asked me to say a few words about the historical background to this bill. A more detailed account can be found in my written testimony.

The most interesting aspect of the history of our nation's efforts to deal with illegal migration focus on work site enforcement. In a real sense, the work site enforcement measures called for in S269 are the culmination of an effort begun by the great Democratic Senator from Illinois, Paul Douglas, back in 1952. He had the temerity to propose an amendment to the Immigration and Nationality Act that provided for sanctions against employers who knowingly hired illegal aliens. In that Act, Congress made it illegal to harbor an undocumented alien but specifically provided that employment was not "harboring," a provision that became known as the "Texas Proviso."

The Douglas amendment was defeated by a vote of sixty-nine to twelve for a simple reason: Agricultural employers in the Southwest and California wanted a steady supply of illegal, exploitable labor, and most Americans were largely indifferent to the issue. The desire for such labor by employers was enormous, as sophisticated irrigation systems added 7,500,000 acres to agricultural lands in seventeen western states between 1945 and 1955. Employers learned to tolerate periodic roundups and summary deportations when the American people seemed aroused enough about the issue to want some kind of symbolic action.

By the late 1950s and early 1960s, a new generation of political leaders influenced by the civil rights movement were moved by stories of exploitation and terrible living conditions in migrant labor camps. In addition, organized labor probably reached the zenith of its political influence, and it had a strong stake in tightening U.S. labor markets. Peter Rodino, Democrat from New Jersey, tried to legislate employer

sanctions. The main stumbling block, even for those who were sympathetic, was the question of verification. In the hearings held in 1972, the Social Security Administration said that it would be prohibitively expensive to reissue counterfeit-resistant cards in order to establish the eligibility of employees for work. Therefore, Rodino avoided the verification question in the bills that he introduced in 1972 and 1975. In order to prevent employer discrimination against eligible workers based on ethnicity, Rodino and Senator Kennedy introduced new bills to broaden antidiscrimination provisions. Of course, the flaw in any employer sanctions proposal along these lines is that it would depend upon self-attestation through easy to counterfeit documents in order to establish one's eligibility for work. In any case, these efforts were unsuccessful, because Senator James Eastland, Democrat of Mississippi, sat in the chair where you sit now, Senator Simpson, and was a grower who opposed any restrictions on illegal alien employment.

The issue had surfaced in an important enough way for President Ford to appoint a domestic council committee on illegal aliens and for President Carter to appoint a Cabinet level committee to study illegal immigration. But neither of them proposed a new, secure system for linking employee eligibility to employer sanctions. The White House plan never made it out of committee in either House or Senate. Organized labor, whose political influence was waning, called for documentation based on Social Security. But other elements of the Democratic Party constituency, mainly Mexican-American advocacy leaders, opposed any verification as potentially discriminatory.

Enter the Select Commission. By the time you joined the Select Commission on Immigration and Refugee Policy in 1979, along with Senator Kennedy, who was instrumental in its creation, the country was seeing a large number of apprehensions every year. From 1977 through 1987, the number of apprehensions rose above one million annually in all but three years. Although the vast majority caught at the Mexican border were Mexicans, and probably about sixty percent of the illegal aliens in the U.S. came from Mexico, the rest from Latin American countries, Asia, and even Europe. Most illegal aliens, probably around seventy percent, perhaps a little higher, did not work in agriculture at all. Even Mexican nationals increasingly bypassed low wage farm jobs and went directly to the cities—principally Los Angeles—to perform a variety of jobs in restaurants, the garment industry and other light manufacturing, construction, and even white collar jobs. The best estimate of the illegal population in the U.S. in 1978 was that there were no fewer than 3.5 million or more than 6 million at any one time. Later studies showed that our upper estimate was probably on the high side in that range.

The staff and the Commission concluded that with many points of access along the 2,000 mile border, with a longer border with Canada, and with growing penetration at the ports of entry, including airports, it was extremely difficult to have a comprehensive enforcement strategy without work site enforcement.

That was the situation when the Select Commission began its deliberations on this problem. At the end of what was the most thorough review ever done to that point, the Commission concluded that:

"One does not have to be able to quantify in detail all of the impacts of undocumented/illegal aliens in the United States to know that there are some serious adverse effects. Some U.S. citizens and resident aliens who can least afford it are hurt by competition for jobs and housing and a reduction of wages and standards at the work place. The resistance of a fugitive underground class is unhealthy for society as a whole and may contribute to ethnic tensions. In addition, widespread illegality erodes confidence in the law generally, and immigration law specifically, while being unfair to those who seek to immigrate legally."

The Commission went on to say that it was not classifying illegal aliens as bad human beings. They often are ambitious and creative men and women. "But," it stated, "if U.S. immigration policy is to serve this nation's interest, it must be enforced effectively. This nation has a responsibility to its people—citizens and resident aliens—and failure to enforce immigration laws means not living up to that responsibility."

The Commission even tied its proposal for legalization of long time illegal aliens to its enforcement effort. It hoped that new and accurate information about migration routes and the smuggling of people into the United States would contribute to the targeting of enforcement resources and that new and accurate information about the origins of migration would enable the U.S. to work with sending countries in an effort to deter migration and would provide information about patterns of visa abuse to help make our visa control process at ports of entry more effective.

But the Commission pointed out that:

"The recommended legalization program will help enforce the law \* \* \* only if other enforcement measures designed to curtail future illegal migration to the U.S.

are instituted. That is why the Commission has linked the legalization program to the introduction of such measures."

It was wonderful rhetoric, but when it came down to the toughest vote of all, the Commission punted, which is exactly what Congress did in 1986 when it passed the Immigration Reform and Control Act. The toughest vote, of course, had to do with establishing a reliable and universal means of identifying persons eligible to work so that work site enforcement would be effective. If you look back on the Commission's voting with regard to employer sanctions and worker eligibility, you find an interesting pattern than reveals just how tough this issue was.

Although the Commission voted fourteen to two for employer sanctions, it could not decide on precisely what system should be established to verify the eligibility of employees to work. Eight Commissioners voted for a more secure method of identifying those eligible to work than existed at the time, but there was no consensus on the mechanism. Secretary of Labor Ray Marshall preferred a call-in data bank approach, but such a mechanism would only be as good as the data put in the registry. Moreover, employees would still have to identify themselves in some way for employers to check the data system. Most Commissioners tended to think that the Social Security card would have to be upgraded for various reasons and that eventually a reliable and secure system of identifying eligible employees could be based on a counterfeit-resistant Social Security card. But the Social Security Administration at that time opposed it.

The verification issue has always been the stumbling block. By 1979, twelve states had passed employer sanctions laws. California had one that dated back to 1971. But neither employers nor state law enforcers could figure out a method of verifying immigration status.

Senator Simpson pushed hard to develop a secure method of verification, a phased-in, counterfeit-resistant work eligibility identifier. He proposed in 1982 that employers should rely on presently existing documents for only three years. The administration would have to develop a secure system of ID, but not a national identity card.

Senator Simpson's secure system provision passed in the Senate in 1982 and 1983, but it was held up in the House by a coalition of Hispanic, liberal, civil rights and civil liberties interests concerned with its potential for discrimination. Even the proposal for a presidential study was hotly opposed. Hyperbolic attacks accused the United States of being on the road to a pass card system similar to that of South Africa. One Congressman compared the proposal to Hitler's system of forcing everyone to carry a card. Of course, these accusations had nothing to do with the truth, but a great many people became terribly nervous when they were made by persons in high places.

Representative Sam B. Hall, Democrat of Texas, proposed a phone-in verification system in 1984, but this was modified in conference to require a three year demonstration project to determine the feasibility of a telephone verification system. That idea lived again in 1986 with the passage of IRCA. Congress preferred that existing forms of identification be used to identify eligible workers, with well known results: After a short period of reduction in the numbers of illegal aliens, the word was out that documents could be fraudulently made and easily purchased. And the provision for the administration to develop a more secure system of verification was not acted on by the Reagan or Bush administrations. The only experiment—a telephone verification study authorized by IRCA—was not initiated until February 1992.

By 1986, the most effective political opposition to making employer sanctions work probably came from employer groups, particularly growers in the West and Southwest. Their position was that if the government was to take action to cut back on illegal migration, it should also invent some version of the bracero program. They wanted to be in a position, as they had been in the past, to turn the spigot on and off to regulate the flow of workers, particularly from Mexico. In the end, IRCA provided them with a substantial number of newly legalized workers and a potential for more, along with an employer sanctions system that is extremely hard to enforce.

The President has the authority to explore better mechanisms for verifying work authorization, to monitor, evaluate, and make improvements as needed. President Clinton has begun that process. But the legislation embodied in Subtitle A of S. 269, introduced by Senator Simpson on January 24, is necessary, in my opinion, to speed this process along. I believe it is realistic as well as consistent with high standards of civil rights and civil liberties.

What do I mean by "realistic"? I mean four things. First, it will be phased in over a period of time; second, the technology and data systems to make it effective are much better than they were fifteen years ago, when the SCIRP staff suggested that

we move down this path; third, the costs are actually less than estimated by SCIRP; and finally, this system has a high probability of substantially deterring illegal migration.

That the legislation requires the President to institute the entire system within eight years is realistic, because it will take time to develop a data base from Social Security and INS information and link that to modalities of identification in different pilot programs. That is realistic. By directing the President to conduct three-year demonstration projects in five states, with the possibility of additional or renewed projects, the legislation gives Congressional authorization to an initiative that the White House appears ready to take.

Directing the Attorney General to establish a data base gives an impetus for something the INS and the Social Security Administration have already begun to do. I believe that an electronic validation of the Social Security number is now much more feasible than it was fifteen years ago. As contemplated in this legislation, the new system to verify eligibility to work can also be used to verify eligibility to receive public assistance. I was pleased to learn that the estimated annual cost of maintaining and operating the verification system is \$32 million. That would cover the maintenance of the computer registry, the costs of operating the automated system for checking Social Security numbers against it, operator costs for calls that cannot be handled automatically, and telephone lines for an 800 number to be used by employers.

The largest expense has to be done away, which is to correct errors in the SSA/INS data bases. Here, we understand that we are talking about approximately \$122 million initially and an annual cost of \$30 million, plus the additional costs of resolving discrepancies in the INS data base. These are investments that must be made, even if the computer registry were not proposed.

Why will the new system be such an improvement over the present one? The present system is deeply flawed, because documents may be forged and because it sometimes requires employers to make judgments that they should not be asked to make. The employer can accept documents at face value, but employers worry that if a new hire turns out to be an illegal alien presenting false documents, the employer could be subject to sanctions. If an employer chooses to question workers for more documents, she or he may wind up being charged with discrimination.

Every worker must already provide Social Security information to employers. The federal government maintains this information, including sufficient identifiers, such as the mother's maiden name, and both the place and date of birth, which could be used in effect as a PIN number in the same way as bank ATM systems. At the very least, as contemplated in this legislation, we must begin pilot programs to test the hypothesis that this new methodology would inhibit fraud, deter illegal migration, and reduce discrimination.

No one is proposing a national identification card. There are fifty state driver's licenses, and even national standards for tamper-proof driver's licenses, yet no one fears a national driver's ID.

The proposed computerized registry based on the Social Security number may be compared to the system that many merchants use to accept checks. Typically, when presenting a check to a merchant, two forms of identification are required: often a driver's license and a major credit card. Then the merchant will use a system like Telecheck, which determines electronically whether there is enough money in the account to cover the check. That is also what determines whether or not the merchant will accept the check. You may present a driver's license that looks good, but it is the electronic verification that is convincing.

As someone who has spent a great deal of my adult life fighting against those who would abuse civil rights, I am convinced that the registry system is basically pro-civil rights, and that our nation will have a net gain in the protection of civil rights. Why do you think Paul Douglas was interested in employer sanctions in 1952? It is because a great many American citizens and permanent resident aliens found their wages and work standards depressed because of the availability of a pool of exploitable illegal alien workers. In some cases, they actually were displaced from their jobs. In short, they were being discriminated against by employers because of their citizen and permanent resident alien status.

I am willing to concede that from the perspective of human rights, one can plausibly argue that those of us who are born into this country or who were fortunate enough to come to it as legal immigrants have been given civil rights protections that most of the rest of the world's population does not enjoy. Yet, all human beings have human rights. The problem is that we live in a world of nation states and right now, and I think for quite a while beyond my lifetime, it will not be possible for the United States to enforce human rights outside of its borders. Nor can we deal with all problems of human rights deprivation by letting everyone come to the Unit-

ed States. Indeed, our ability to sustain our vision as a nation of rights and opportunity depends on our commitment to equal protection of the laws for all persons who live and work lawfully within the boundaries of the United States. I say this as someone who is for a strong pro-legal immigration and refugee policy and as someone who believes that the United States has a major responsibility to work with the international community through the United Nations to bring about more just conditions everywhere in the world. If the question is civil rights at home and not human rights all over the world, S. 269 is a step forward.

The problem with the present system is that it results in two kinds of discrimination against persons who are lawfully eligible to work: first when employers prefer to hire unprotected labor and do not really care whether the documents presented to them are false or not, and second, when employers use the document requirement as an excuse to discriminate against foreign-sounding and -looking persons.

The proposal in this legislation asks of employees only that they check electronically what they already collect—the Social Security number. If, as I believe will be the case, pilot testing shows that this is a more reliable way to verify work authorization, then it should be possible to eliminate the I-9 process altogether. Employees would no longer have to worry about the validity of many different documents. Only one question would be asked: "What is your Social Security number?" which all workers have to provide anyway. We ought to vigorously go after those who knowingly hire illegal aliens.

Of course, we should continue to monitor immigration-related discrimination at the work site. The Office of Special Counsel was a good idea when Barney Frank first proposed it, and it is still an excellent idea. Citizens and aliens alike must be protected under our Fourteenth Amendment.

Privacy is a critical liberties issue, as Chief Justice Brandeis pointed out a long time ago. Explicit protections must be put in place against the use of the data base—and any card or any other means used to gain access to it—for purposes other than those specified in the law. No one should be required to carry a Social Security card or to present it for routine identification purposes. There should be penalties for the inappropriate use of the verification process, which should be put into law, rather than regulation. The computer system should have appropriate technical safeguards regarding authorized user's access to individual information. Safeguards must ensure that information about specific individuals—other than the limited information to be provided as a part of the verification process itself—cannot be obtained from the data base.

I believe that the efforts made to protect privacy with regard to the national registry will heighten consciousness about privacy matters and civil liberty issues throughout our nation. To take a historical example: The violation of the civil rights and civil liberties of Japanese-Americans during World War II, which undermined the most fundamental of American principles, did not result from the existence of a national registry, but came about because a terrible mistake in judgment was made about the loyalty of Japanese-Americans to the United States.

I will be happy to respond to questions about these and other matters embodied in S. 269 during the question period.

**Senator SIMPSON.** Thank you very much, Larry. You add a great deal always.

Now, Professor Charles Keely.

#### STATEMENT OF CHARLES B. KEELY

**Mr. KEELY.** Thank you, Mr. Chairman. I have been asked to comment concerning the refugee resettlement aspects of the bill, specifically sections 174 and 181. I come at this issue as somebody who looks at international relations, and particularly the issue of the role of the international refugee apparatus and what its role should be in the post-cold-war world.

In trying to do that, and looking specifically at the United States, I come to the question of the role of refugee resettlement in the United States. To do that is dangerous because immediately any discussion of possible changes in procedure is often deemed as an attack on refugees themselves and even the concept of asylum. Be that as it may, I think we need to reevaluate refugee policy.

As you know, the international refugee apparatus is based on the assumption that the preferred solution for refugee flows is repatriation of people to their own country; that we should bring about situations where people's human rights are respected by their own government so that they may live safely in their own country.

However, since the end of the Second World War, this country has focused on resettlement. In fact, we have used and, in fact, even encouraged refugee flows as part of our strategy concerning communism. I think it is a moot issue and at this point it is not even reasonable to meet the debate whether one thinks that was good, bad, or indifferent, or what the contribution of that strategy was to the end of communism.

Whatever that was, there is a price to pay, and the price to pay is that we have focused on resettlement to the point that we have not spent a great deal of time on the use of diplomatic, military, and economic mechanisms to prevent refugee flows to begin with and to bring about the conditions that would allow people to be repatriated. We have underfocused, if I could put it that way, as opposed to focusing more on the resettlement as a way of dealing with communism.

Now, the world has changed. Nevertheless, we in this country continue to resettle large numbers of people, and many of them from Communist countries, under the idea that we have to honor or pay off the commitments of the anti-Communist era. We continue not to really emphasize the issues of prevention or bringing about the conditions for repatriation, and the world, in general, is searching for that.

There are lots of difficulties. The issue of humanitarian intervention, the issue of how one brings about situations where people, particularly in multinational countries, can have their human rights respected, are not easy questions to answer. However, our policy in this country, and the numbers that we bring in in terms of resettlement, brings about—and I know it is a harsh phrase—what I think is a kind of humanitarian pork barrel about who gets in, and there are tradeoffs among various ethnic constituencies.

I would say at this point, however, Mr. Chairman, and I want to underscore this very much, if a cap is put in place and we continue this divvying up of the 50,000 between various ethnic groups in this country, that is the cruelest hoax of all. It seems to me that what we need to do is to talk about any resettlement that we do have, and we probably do need some, ought to serve both the humanitarian purposes of people who are in extreme danger, as well as helping us in terms of bringing about stability internationally.

I would also say that if we look at the resettlement policy of the United States at the levels of recent years, I think it is a very big stretch for anybody to make the case that the resettlement at the levels that we have had has added in any marked respect to international stability. I doubt that it has added much to the respect for human rights around the world, nor do I think it has helped enhance public support in this country for protection and assistance to refugees. If anything, I think it has induced a certain amount of cynicism about the way the process goes on.

Domestic politics have resulted in special treatment for select groups. The growth in refugee resettlement and the problem of

costs and welfare dependency have often not been addressed by advocacy groups, who have largely abdicated responsibility about numbers and costs. But to be even-handed, Mr. Chairman, Congress must also take a great deal of the responsibility for welfare dependency of refugees because of the 1980 Refugee Act. Complaints from Congress, it seems to me, ought to be focused on the actions of Congress in passing the 1980 Refugee Act, which virtually mandates welfare dependency, if one looks at the way this system is going to work.

Finally, Mr. Chairman, it seems to me that the issue of the international refugee regime or the international refugee apparatus, of which the United States is an extremely important part, ought to be focused on bringing about stability around the world. Stability is the natural element for human rights to be supported, and that would mean refugee flows would be much, much rarer.

It strikes me, therefore, that the proposal in this bill to reduce refugee resettlement or to require, at least, congressional authorization through a joint resolution or a bill is well taken. In addition, it strikes me also that the repeal of the 1966 Cuban Adjustment Act also fits in with the same idea.

I will end here, Mr. Chairman. You have my prepared statement. Let me just finally say that in order to work out these ideas, it seems to me that one has to focus on what will be the place of refugee policy, not just resettlement, but refugee policy in the broad sense, in the post-cold-war world. If we can't answer that question or are unwilling to even address it, then we will just continue what has gone on in the past.

[The prepared statement of Mr. Keely follows:]

#### PREPARED STATEMENT OF CHARLES B. KEELY

The current international refugee apparatus dates from events following World War II. The United States was a leader in negotiating international agreements and agency mandates concerning refugees, which focused primarily on the UN High Commissioner for Refugees. The agreements, resolutions of authoritative UN bodies, and the presentations of UN officials and governments' representatives supporting the international refugee agencies have constantly repeated that the preferred durable solution for refugees is repatriation to their own country.

Despite the rhetoric, practice has varied. Shortly after the end of WWII, Soviet mistreatment of repatriated people correctly focused international concern on involuntary repatriation and the conditions of repatriation generally. This resulted in some 2 million displaced people in Europe. During the postwar period, the need for economic and political stability, the fear of Communist takeovers of West European governments, the emergence of the Iron Curtain, and the strategy of containment led to initiatives like the Marshall Plan and the Western Allies' efforts to develop democratic institutions in Germany. As part of the stabilization efforts, allies outside Europe agreed to absorb many of the displaced persons. For its part, the U.S. passed the Displaced Persons Act of 1948 and the Refugee Relief Act of 1953, as part of the postwar stabilization of Europe.

In addition, the Cold War led to a practice of encouraging people to flee from behind the Iron Curtain with the promise of resettlement in the West. Even while agents were trained and dropped into countries that made up the Warsaw Pact, the U.S. routinely resettled "escapees" from those same countries.

The escapee policy was based on a number of assumptions. First, the numbers would generally be low because exit would be prohibited by the Soviet Union and its satellites. Second, the propaganda value of refugees risking their lives to escape Communism was a valuable tool in the Cold War. Berlin Walls were needed to keep people in, not to keep out Westerners fleeing to the glories of the Marxist-Leninist march toward the classless society. Third, the policy assumed that Communism would be around for a long time. Fourth, Western domestic opinion would support resettlement of freedom fighters and escapees from Communism.

The escapees from Communist satellite countries included a large number of Hungarians after the 1956 uprising. Three years later, Cubans were welcomed in large numbers, beginning a history of fairly steady Cuban flows, occasionally punctuated by larger groups such as the Camarioca boat flow, the orderly departure airlift in the mid-1960s, Mariel and other smaller spasmodic outflows. In 1975-76, the Vietnamese outflow following the American withdrawal from Vietnam was handled by a special resettlement task force. The movement out of Indochina continued, and the hemorrhage of Vietnamese boatpeople led the U.S. to pledge resettlement at the rate of up to 12,000 per month at the Geneva Conference in 1979.

The result of postwar resettlement of displaced persons to aid European restabilization and the policy of resettling citizens of Communist governments was a distortion of the goals of the international refugee system. While the rhetoric said repatriation was the preferred goal, the U.S. actually encouraged outflows for ideological reasons and identified refugee policy with resettlement in a third country, specifically in the United States. To many Americans, including Members of Congress, refugee policy was synonymous with resettlement in the U.S. Refugee policy was not primarily the economic, political, and military measures available for diplomatic negotiation to help prevent refugee flows, to encourage agreements that would allow repatriation and develop conditions to reduce the probability of future flows. The concept of using incentives to prevent human rights violations that inevitably lead to internally displaced and international flows of refugees was a secondary consideration. Human rights were looked upon as a somewhat soft, second or third level, issue rather than as a major precipitant of international instability.

Until the 1980 Refugee Act, U.S. legislation did not contain language that echoed our treaty obligations as a signatory of the 1967 Protocol on the Status of Refugees. The 1980 Act itself focused on procedures for resettlement in the U.S., and included consultation processes to set the annual refugee admission levels and the scope of refugee entitlements.

In short, for foreign policy reasons, the United States developed a set of practices that made the exception—resettlement—the rule. The “preferred durable solution” of repatriation took a back seat to the requirements of foreign policy. Whatever is thought of the wisdom of past policy and its payoff as a contributing factor to the demise of Communism, resettlement should again be perceived for what it is—an exception and not the rule, for the international refugee apparatus.

A similar analysis could be made for the asylum policies that have developed in this country and in Western Europe. They were developed in the Cold War and had strong ideological and strategic components. They were premised on similar assumptions about size of flows. The levels of administrative and judicial review and per capita levels of support became incentives for abuse. To deny that abuse exists in the applications for asylum in Europe and North America is dangerous. It is probably more destructive of the institution of asylum than attempts by Western governments to change procedures and requirements for asylum applicants.

The problem for refugee and asylum policy changes is the same. Any suggestion to alter procedures is attacked as a wholesale reduction or even abandonment of refugee protection and the provision of asylum to the politically persecuted. For Western governments to abandon asylum or to allow for no resettlement as part of an overall refugee policy would be insanity. There are the most hard-nose reasons and real politik incentives for states to maintain a capacity for internationalizing large, uncontrolled outflows of people who cannot get the protection from their state that any citizen should expect. Allegations that procedural changes amount to attempts to destroy the refugee standards so painstakingly built up for 75 years, as well as the institution of asylum, are completely unfounded.

What domestic policy is recommended regarding refugee numbers to be resettled in the United States? The norm of repatriation needs to be reinstated in action and program as well as in rhetoric. The need to introduce order in international relations in the wake of the Cold War includes dealing with the wave of attempts at nationalist secession, the limits of self-determination for the state system, and the responsibilities of states with multinational and multiethnic citizenries. All multinational states cannot splinter into new states, if only because more than one nationality often claim the same territory. An independent state also requires capacity to support and maintain the roles of a state.

I have no magical formula about how to resolve the political yearnings since the Cold War. Multinationalism, competing ideologies, weak states created by a decolonization process that left successor states with frail institutions, infrastructure and overall prospects all contribute to the drive for creating still larger numbers of new, weak states. However, refugees will result from wars of secession and wars to change the mode of government (now more likely driven by a theocratic rather than a Marxist vision), as well as from the implosion of weak states like Af-

ghanistan, Somalia and Liberia, and perhaps in the future by Zaire and others. Resettlement in industrial countries will not solve these political issues. Resettlement should be reserved for desperate cases that lack other alternatives. Political solutions, including economic components and diplomatic support, are the hope for lasting settlements that will help all the refugees from a country, not just the lucky few—usually the best educated, the wealthiest, the best connected—who are resettled in the industrial countries.

A limit on refugee resettlement is not an abandonment of the international refugee system. It can contribute to international stability and the protection of people. But stability will emerge only if strong states commit to the proposition that states must behave like states, and only if the commitment is backed by inducements for states to protect citizens and to seek political solutions to internal differences that must be addressed rather than suppressed.

In addition, the U.S. domestic ethnic and advocacy politics cannot continue to make refugee admissions a humanitarian pork barrel designed to satisfy constituencies under the rubric of honoring Cold War commitments. The U.S. should abandon the Lautenberg amendment that lists groups in the former Soviet Union who get special treatment, the admission of Indochinese as a brace supporting opposition to the Hanoi government and its policies, and the continuation of special policies towards Cubans. Resettlement should be the exception for those cases when no other remedy is available and death or physical harm is imminent. The UN High Commissioner has a list of persons in dire need. A fair share of the people for the United States to resettle is well below 50,000.

It is a big stretch to say that resettlement in the United States at the levels of recent years has added to international stability, furthered respect for human rights, or enhanced public support for the protection and assistance of refugees. Domestic politics have resulted in special treatment for select groups with U.S. support. The growth in refugee resettlement and the problems of cost and welfare dependency have not been addressed by many of the advocacy groups, which have largely abdicated responsibility about numbers and costs. To be even handed, Congress must take the greatest responsibility for welfare dependency of refugees because of the 1980 Refugee Act. With no disrespect, it saddens and sometimes sickens me to hear Congressional complaints about refugee welfare dependency when Congressional mandates in the 1980 Act put an incentive system in place that virtually made dependency inevitable.

However, to cap refugee admissions and continue the pork barrel politics of divvying up the limited places for groups favored by domestic advocates would be the crudest hoax, would not add to the maintenance of public support for refugee and asylum systems, and would not add to international stability.

International stability can increase through a coordinated set of policies that include support of human rights, so that refugee flows will be rarer and that include measures which will swiftly and predictably exact a price of governments that violate human rights of citizens.

A cap on refugee admissions as part of an overall refugee policy—a true refugee policy and not just a resettlement policy—can be a valuable signal about expectations and outcomes. Problems cannot be exported as refugees to other countries. Political solutions will be expected. Human rights must be respected by states if they expect to be treated as sovereign states.

Perhaps the cap can prompt movement by the U.S. government on the larger picture. This is not a meanspirited abandonment of nearly eight decades of humanitarian standards. It is a necessary part of a refugee regime that seeks stability in the international system, including the respect of human rights by all state members. A refugee cap may well be the spur to move policy and practice toward stability, which is the natural medium for respect of human rights. Current policy encourages cynicism about domestic advocacy politics at home and misbehavior by tyrants abroad. We can do better.

Senator SIMPSON. Very provocative.  
Professor Miller, please.

#### **STATEMENT OF MARK J. MILLER**

Mr. MILLER. Thank you, Senator Simpson. I would simply add to Professor Fuchs' observations that we should recall as well that Mexico advocated employer sanctions back in the 1940's and the early 1950's. They wanted to see employer compliance—

Senator SIMPSON. Could you pull that microphone a little closer?

Mr. MILLER. I am sorry.

Senator SIMPSON. That is very helpful. Say that again because that is a very interesting statement.

Mr. MILLER. Yes. I would simply add to Professor Fuchs' history that Mexico actually advocated employer sanctions during the bracero program period. They wanted to see the growers in Texas comply with the bilateral labor agreement and they saw sanctions as part of the way of getting that employer cooperation.

I have five or six very quick summary reflections and observations for you that are really reflections upon European experiences confronting this challenge of regulating international migration.

First, on the question of verification, many Western European states, of course, have national identification documents. Some of them are mandatory, others not, but what impresses me is that there is less document fraud in Western Europe than over here in the United States. I think European experience suggests that you can be a viable and functioning democracy and have a national employment identity verification for employment purposes.

I concur with Professor Fuchs' observation that such a document might actually increase the rights and protect minorities and resident aliens. I still haven't seen any evidence that employer sanctions in Western Europe have engendered additional employment discrimination against minorities.

I have a couple of recommendations. In Western Europe, enforcement of employer sanctions is primarily the responsibility of the ministry of labor, and I noted in the bill that the money for enforcement is going to go to INS. I think we need to reflect a little more upon the Department of Labor's role in this entire process. It is always going to be an interagency enforcement effort. Maybe we should consider the French experience of creating an interagency body that is charged with monitoring and facilitating interagency cooperation in enforcement of laws against illegal aliens.

In my testimony, I want you to take particular note of recent French experience with the obligation of employers to notify social security prior to actually employing a person in a job. The French have made great progress, and that makes me very hopeful for the type of system that is envisaged in the legislation under your consideration.

I would also throw out the observation that maybe we need to think more about building local- and State-level coordination and participation on this question of controlling illegal migration. There are several interesting European experiences there.

Finally, it is interesting, when you compare Europe and the United States, how, in Germany and France, there is a great emphasis on understanding illegal migration within the underground economy. Here in the United States, I don't think we have linked underground economy and controlling illegal migration as much as has been done in Europe, and I just think we perhaps should think more about it. The Europeans have succeeded in building bilateral cooperation on controlling illegal migration. I think we need to do a better job of that here in the United States.

Thank you.

[The prepared statement of Mr. Miller follows:]

## PREPARED STATEMENT OF MARK J. MILLER

At my first appearance before this subcommittee, on September 30, 1981, I related how most Western European states had adopted laws similar to the employer sanctions provision then under consideration by the U.S. Senate. I contended then, as I do now, that analysis of Western European experiences with such laws can provide insights and perspectives helpful to U.S. policy debates over employer sanctions and illegal migration. Western European societies and polities obviously differ in important ways from the U.S., but they too confront major challenges in regulating international migration.

In the mid-1980s, with the support of the German Marshall Fund of the United States, I updated and expanded upon my testimony. I summarized my analysis at a GMFUS-sponsored conference here and my report was published by the Center for Migration Studies in 1986. There were several supplementary publications. This report argued that employer sanctions enforcement in Western Europe was continuing and, in many ways, progressing, but that there were numerous obstacles to effective enforcement. Nonetheless, Western European governments continued to regard employer sanctions as a significant and indispensable component in their strategies to curb illegal migration. I reiterated the observation made back in 1981 that enforcement had not engendered additional employment discrimination against resident aliens and minorities in Western Europe. From 1983 to 1989, I had the privilege of serving as the U.S. correspondent to the OECD's SOPEMI group of migration specialists. I regularly inquired about the discrimination issue and other illegal migration policy concerns.

In 1990, with the support of GMFUS, I was able to conduct extensive research on employer sanctions and illegal migration in Europe. The major findings were written up in a paper given at a conference in 1990, much of which was subsequently published in an article in West European Politics. That same paper, with the benefit of further research conducted in Paris in early 1993, also served as the basis for a research paper commissioned by the Commission on Immigration Reform in early 1994.

I submitted the long paper written in 1990 with my testimony to you on April 10, 1992. The upbeat mood prevailing in Western Europe on employer sanctions in the early 1980s had given way to more somber perspectives. Employer sanctions continued to be seen as necessary to any rational and comprehensive approach to meeting the challenge of international migration, but their enforcement was insufficient. Many of the problems and obstacles, some of which had been noted back in 1981, remained. Others had been rectified. Concern over illegal migration had grown. The phenomenon increasingly appeared intractable and fated to expand rather than contract. However, Western European governments had developed a much greater legal and administrative capacity to punish and deter illegal migration than they had in the mid-1970s. In sum, despite the fine-tuning of legislation and policies and the incremental growth of an administrative capacity to punish illegal alien employment, which was increasingly subsumed under a broader campaign against illegal employment, the quest for immigration control appeared an uphill struggle for Western European democracies by the early 1990s. This view also informed my testimony to the House Subcommittee on international law, immigration and refugees on June 16, 1993. While significant but unmeasurable illegal alien employment persisted, Western Europe was not being overrun by uncontrollable hordes of aliens as widely feared and predicted. The limited capacity to deter illegal migration through provisions like employer sanctions helped prevent this.

## RECENT DEVELOPMENTS IN EMPLOYER SANCTIONS ENFORCEMENT IN FRANCE

My interviews in early 1993 revealed a tempered, but upbeat mood in the inter-agency task force charged with monitoring enforcement of laws against illegal employment. Perhaps the most significant development in recent years was the subsuming of the campaign against illegal alien employment under the broader campaign against illegal employment. The French approach resembled that of the Germans by the early 1990s. I recently translated excerpts from a report by a key French proponent of this new approach and included it in the July, 1994 issue of *The Annals* which I edited. The article by Claude-Valentin Marie reflects this novel approach and offers penetrating insights into current French migration realities.

Marie has been eager to put illegal alien employment in the broader context of illegal employment. Most illegal employment involves French citizens, not aliens. Marie argues that economic trends are fostering illegal employment in general. He stresses the growing precariousness of employment in France and growing illegal employment of French citizens and legally-admitted aliens in addition to illegally employed aliens.

Marie, though, is quite upbeat in his assessment of the deterrent value of French laws against illegal employment, including illegal employment of aliens. Considerable progress has been made. The statistics which he is now in charge of keeping reveal a resurgence in citations for illegal alien employment in 1991. More importantly, however, a study done by Marie and Agnes Brizard provided the first in-depth analysis of the growing responsiveness of the French legal system to illegal employment and particularly illegal alien employment. One of the principal complaints about employee sanctions in the past was that judges did not take illegal alien employment cases seriously.

The French judiciary had been the object of extensive sensitizing efforts by the inter-agency task force charged with monitoring enforcement of laws against illegal employment since the late 1970s. That effort would appear to have borne fruit. The Brizard and Marie study reveals that legal punishments for illegal alien employment are significantly more severe than punishments for comparable transgressions. Prison terms are more frequent outcomes and legal fines are more severe than in cases of illegal employment.

Enforcement of laws prohibiting illegal alien employment is the responsibility of many services. The labor inspectorate used to have a specialized corps of inspectors for illegal alien employment. In 1983, the authorized level of labor inspectors specialized in enforcement of legislation concerning aliens was 55. However, there were considerably fewer specialized agents than authorized. Annual reports by the inter-agency task force monitoring enforcement of laws against illegal migration back in the late 1970s and early 1980s contain detailed yearly activity reports on the corps of specialized agents, which then numbered over 25. Some also criticize departmental labor ministry officials for ordering the specialized agents to work on unrelated matters. More recent annual reports have not contained this information. However, they do describe the very extensive training given to personnel from various police, gendarmerie and other administrative services over the years. Thousands and thousands of governmental employees from policemen to agricultural inspectors now include detection of illegal employment, including illegal alien employment, amongst their duties.

Interviews with French officials in 1993 and 1994 indicate that citations for illegal employment and resultant legal punishment and fines are progressing steadily. Complementary fines for violations of social security laws are as well. In the department of Val-de-Marne in 1993, 13 fiscal controls netted fines of 121 million francs. A survey carried out in twelve departments in 1993 suggested that very large fines were being levied for nonpayment of social security taxes. As illegal employment and illegal alien employment often is accompanied by numerous social security transgressions, it is important to keep these complementary forms of punishment in mind when examining statistics on enforcement of laws against illegal employment in France. They do not figure in statistics but are a genuine deterrent force.

The new system requiring employers to notify social security prior to the start of actual employment, according to Marie, is functioning well. This facilitates inspections and legal recourse against offending employers.

Nature of conviction and nationality of convicted:

### CONVICTIONS

Nature of conviction (nationality of convicted)	Total	Imprisonment			Fines		
		Total	Confirmed	Avg. term (months)	Total	Confirmed	Avg. levy
Doing illegal work—total .....	2,346	544	122	4.0	1,710	1,417	3,900
French .....	1,769	369	71	3.5	1,331	1,086	3,913
EC .....	131	31	8	-	94	82	3,961
Non-EC .....	363	133	41	4.9	216	189	3,867
N. African .....	199	63	19	4.6	127	113	4,180
Turk .....	32	.....	.....	.....	24	20	3,675
Recourse to illegal work—total .....	993	153	20	3.2	808	708	4,000
French .....	819	121	15	3.0	669	584	4,030
EC .....	41	6	1	.....	35	33	3,557
Non-EC .....	90	21	3	.....	66	55	4,213
N. African .....	58	12	2	.....	44	37	4,054
Turk .....	15	.....	.....	.....	10	6	5,333
Regulations concerning alien employees—total .....	1,329	346	74	4.3	954	886	5,000
French .....	713	117	20	4.6	572	526	4,878

## CONVICTIONS—Continued

Nature of conviction (nationality of convicted)	Total	Imprisonment			Fines		
		Total	Confirmed	Avg term (months)	Total	Confirmed	Avg. levy
EC .....	99	9	1	-	89	83	5,031
Non-EC .....	462	207	51	4.3	252	241	5,333
N. African .....	220	77	20	3.1	143	137	5,025
Turk .....	78	47	17	5.7	30	30	4,493

Source: Adapted from Abstract Justice, Number 29, September 1992, p. 5.

#### EVOLUTION OF THE ADMINISTRATIVE FINE, CALLED THE SPECIAL CONTRIBUTIONS, FOR ILLEGAL EMPLOYMENT OF ALIENS IN FRANCE, 1977–1992

Since 1977, the Office of International Migrations (OMI) formerly the National Immigration Office, which holds a legal monopoly over recruitment and admission of foreign workers in France, has been empowered to recover an administrative fine from employers who illegally hire aliens. This fine is called the special contribution. Its legal rationale is to heighten punishment of an offending employer because he or she violated the OMI monopoly. Hence, the administrative fine is separate from judicial punishment for illegal employment of an alien. It is also in principle separate from complementary fines for nonpayment of social security taxes, etc.

Since 1981, when illegal employment of an alien became a misdemeanor, employers face judicial penalties of two months to three years of imprisonment and/or fines of 3,000 to 30,000 francs, multiplied by the number of illegally employed aliens. The special contribution is an automatic fine, subject to administrative appeal, that punishes an employer irrespective of the outcome of legal proceedings.

Administratively, a special contribution should result from every infraction for illegal alien employment. However, OMI must be notified by the director of a departmental labor and employment office of an infraction in order for OMI to levy the special contribution. Most citations for illegal alien employment are made by labor inspectors, but police, gendarmes, agricultural inspectors and other corps also can write up violations. The enforcement powers of the various services vary. Labor inspectors, for instance, can inspect any site without prior notification. They cannot verify identities. They call upon the judicial police to do that. The judicial police must have a justifiable motive for entering a business. They cannot conduct random verifications of identities. Enforcement, thus, usually involves inter-agency cooperation. When a labor inspector writes up a citation for illegal employment of an alien, it has the force of law unless overturned or forgiven during appeal.

According to Mr. Bernard Vachette of OMI, and other sources interviewed over the years, many citations for infractions of the law barring illegal employment of aliens, which arrive in the form of dossiers at OMI, were not transmitted by departmental directors in the late 1970s and early 1980s. Progress in transmission of dossiers was reported in the 1983–1984 period.

By 1990, a debate had developed over the special contribution. Many enforcement personnel and administrators felt that the fine of 32,000 francs was too high. It was disproportionate relative to punishment for other comparable offenses. Several labor inspectors told me that they hesitated to write up illegal alien employment infractions because of the severity of the administrative fine which increasingly was accompanied by other punishments. Writing up an infraction could put small and marginal firms out of business. Sometimes only one violation would be written up when additional aliens were illegally employed and/or additional citations could be made. French labor inspectors are entitled to use their discretion in the public interest. Several inspectors cited aggravation of unemployment, already a major preoccupation in France by 1990, as a reason for not writing up infractions.

This debate contributed to the falloff in special contribution notifications in 1990. The decree of November 8, 1990 modified the special contribution. Three levels of special contributions tailored or modulated to the nature of the illegal alien employment offense were instituted. The normal fine would henceforth be 1000 times the minimum hourly wage (16,870 francs as of July 1, 1992). An augmented fine would be due from employers who already had been subject to the special contribution in the five years prior to the infraction. The augmented fine was 2,000 times the minimum hourly wage (or 33,740 francs as of July 1, 1992). A reduced fine was inaugurated for illegal employment of an alien which was not accompanied by other infractions. Such a reduction was at the discretion of OMI consequent to a recommendation from a department-level director of labor and employment. This same decree

instituted a ten percent surcharge on the special contribution if it were not paid within two months of notification of the employer. An interagency directive made application of the November 8, 1990 decree retroactive to cover all dossiers in which there had not been notification of the fine or which were under appeal. This procedure lasted until the end of 1992. During this period, a new computer-assisted procedure for administration of the special contribution was put into place and became operational as of December, 1991.

Citations for illegal alien employment increased in 1991 but dipped again in 1992. The primary reason for the decrease was the change in legal status of Portuguese and Spanish nationals in that year. They became European Community workers.

In 1992, 2,498 special contributions were assessed. This was the highest level ever. Between 1977 and 1992, a total of 25,942 infractions for illegal employment of aliens had been transmitted to OMI. The annual average of special contribution fines levied between 1977 and 1989 was 1,370. Hence, French officials interviewed in 1993 and 1994 spoke of significant progress in enforcement of employer sanctions.

The severity of the special contribution fine in addition to judicial punishments for illegal alien employment and punishments for related offenses like nonpayment of social security taxes, figured in the background to a sharp drop in recovery of special contribution fines between 1985 and 1989. OMI received only 11.41% of the special contributions levied in 1985, 7.79% in 1986, 4.28% in 1987 and 3.24% in 1989. Data for 1990 and 1991 was not comparable. However, by 1992, the recovery rate had increased to 18.64%.

OMI reported that "the reform made in 1990 and the amelioration of management procedures regarding recovery and issues surrounding it have therefore allowed a clear redressing of the situation and even contributed to heightened efficacy of this administrative sanction." Nevertheless, numerous obstacles to recovery remain. A disproportionately high number of illegal alien employment cases involve employers who themselves are aliens. They frequently repatriate and do not pay the fine. Other employees declare insolvency or are imprisoned and cannot pay.

#### EVOLUTIONS OF CITATIONS FOR ILLEGAL EMPLOYMENT OF ALIENS COMMUNICATED TO OMI AND NOTIFICATIONS OF THE SPECIAL CONTRIBUTION FINE

Year	Citations	Notifications
1977/1978 .....	1,899	1,899
1979 .....	2,151	2,151
1980 .....	1,313	1,313
1981 .....	1,844	1,844
1982 .....	684	684
1983 .....	1,143	1,143
1984 .....	1,268	1,268
1985 .....	1,316	1,316
1986 .....	1,188	1,188
1987 .....	1,547	1,547
1988 .....	1,702	1,702
1989 .....	1,773	1,773
1990 .....	2,508	607
1991 .....	3,250	1,220
1992 .....	2,356	2,498

Source: L'Office des Migrations Internationales 1992, numéro Spécial d'actualités migrations, p. 78. Between 1977 and 1989 OMI statistics only kept for notifications.

#### ADDITIONAL QUANTITATIVE DIMENSIONS OF FRENCH ENFORCEMENT OF LAWS AGAINST ILLEGAL EMPLOYMENT

The French corps of labor inspectors includes 2,910 agents able to make inspections. 32 agents are specialized in illegal employment. All together, they made 284,921 site inspections in 1992 and witnessed 921,856 violations. 23,345 of these were written up, of which 2,270 concerned illegal employment.

Within the Ministry of the Interior, a new agency, known by the acronym DICILEC, was created in late 1994, mainly out of the Air and Frontier Police. It is a specialized agency for control of immigration and illegal employment, although its mission was not entirely clear as late as November of 1994. It has 950 operational agents, of whom about one hundred have administrative jobs.

Additionally, there are the Officers of the Judicial Police who play an important role. Overall, there are about 4,000 police potentially competent to enforce laws against illegal employment, including illegal alien employment.

The number of fiscal agents available to write up citations for infractions related to illegal employment, say for nonpayment of employment taxes, is estimated at 1,100. Agents from the Gendarmerie, customs maritime affairs and social security also participate in enforcement, but estimates of their numbers in enforcement of laws against illegal employment are unavailable.

The as yet unpublished enforcement statistics for 1992 include 5,133 cases of illegal employment transmitted to prosecutors, with a total of 11,232 infractions. 1,457 or 13% of these cases involved illegal employment of aliens. In all, 8,130 persons were indicted, including 5,700 business executives.

In 1991, 4,742 persons were convicted for illegal work. 27% of the convictions involved illegal alien employment. 25% of those convicted in 1991 were aliens from non-European Union countries.

In 1993, a hundred or so investigations by fiscal agents were conducted on the basis of cases written up in 1992. These investigations recovered 223,942,000 francs (roughly 45 million dollars).

By January 1995, more than 176,000 firms had made 1.2 million prior declarations to social security authorities before actual employment began. From September 1993 to December 1994, there were over 18 million such prior declarations. These figures suggest that the experiment in 1992 had conclusively succeeded and that firms were voluntarily complying. This should further help prosecution of offending employers in court. Already, between 1988 and 1991, convictions for illegal employment progressed 90%.

**Senator SIMPSON.** Thank you very much, Mr. Miller.

Mr. Fix, you testified that we should promote family support of immigrants, not government support. I agree. I think that is something I concur with. There are two questions, then, that address that issue.

The number of U.S. citizens who petition to bring in their parents under the immediate relative category has been increasing very rapidly, dramatically. These elderly immigrants frequently have little likelihood of productive involvement in our economy. In fact, they often come to the United States and receive public assistance, forcing the Federal Government to pay the substantial medical costs associated with their older age.

The deemed provisions in my bill would address some of the costs associated with that. What other proposals would you support? Should we require all elderly noncitizens to buy into the Medicare Program? Should we require that a sponsor purchase health insurance before an immigrant visa is granted to the elderly parent? What about a proposal to remove some or all parents from the numerically unlimited immediate relative category?

That is a barrage of questions, but—

**Mr. FIX.** Let me start with the one I think I have an answer to. One of the areas that we are exploring in this area, given the fact that medical expenditures are so high and are such a burden, and we suspect are driving so much of SSI use among the elderly, may be to compel the sponsor and the immigrant—the unit, in effect—to purchase Medicare coverage for the incoming immigrant. This could be extended both to Medicare coverage for hospital care as well as Medicare coverage for physician care.

A second proposal that may make some sense that we haven't totally fleshed out might be to have a longer deemed period for the elderly, for parents who are coming in who have unlikely prospects for employment. Third, the question of whether the parents should be removed from the immediately family category, we haven't considered in-depth, but it does strike me that parents are very much part of the American concept of immediate family, and so that seems to me to be something of a departure.

Senator SIMPSON. Let me go to Larry Fuchs. As executive director of the Select Commission—and you certainly don't want to leave that out of the biography of things that you have done, and you served there so capably as our executive director—you were intimately involved in all efforts in the early 1980's to develop an effective employer sanctions program. Those efforts led to the 1986 legislation.

It must have been a rather frustrating experience for you to observe the legislative process during all that period and to see what happened to the proposals for a verification system, with the reliability and security so predictably necessary if we were to have any kind of effective employer sanctions, and to see the 1986 law requirement of improvements in the verification system to be largely ignored and severely distorted in many ways, and later distorted, too.

Now, you are a member of the U.S. Commission on Immigration Reform and looking at the same Commission recommendations so familiar to those made almost 14 years ago, including the recommendation for the reliable and secure verification system.

My question of you involves several related issues, and if I could ask all those in one great digestible lump so that you would get a great general sense of what I am seeking, I would appreciate it if you would just launch into a response in an attempt to answer them all.

What are some of the similarities and differences you see between the earlier effort and the current situation? Why do you think the earlier effort led to such unsatisfactory results in that area? What mistakes were made? How can supporters of that law increase the likelihood that a better verification system will be achieved this time around?

Mr. FUCHS. Well, OK. First, before I began, you will notice I may get up sometimes, and it is because I will not win the brass butt award.

Senator SIMPSON. I won't either because I will get up the next time you get up.

Mr. FUCHS. I am going for the strong bladder award. I can maybe compete, but I can't on the butt.

But, anyway, the answer to the question is, first, if I heard you, frustration. One has to take a long view. In 1986, you established a principle and employer sanctions was a hard fight, and Paul Douglas would have said "right on." You also established the notion that the President of the United States should begin an experimentation process, knowing that it is complex and there will be bugs that will have to be worked out. Unfortunately, it wasn't really until 1992 that any President, and we had three of them, really began to experiment at all, and that was with the telephone verification system.

Of course, there was frustration. Of course, I particularly resented the attacks on Senators and others in public life who made good-faith efforts to do something for the country that they were leading us down the path toward Adolf Hitler, or a passbook, South Africa, and so on. I resented that strongly, but from a historical perspective I recognized that this is a major undertaking and a complex one in two ways.

It is complex technically, and we are now so much better positioned than we were then. And it is complex politically because you have people of good will, people who sincerely, strongly believe that we are headed down toward a path where privacy will be invaded, and people who believe there will be a net increase in discrimination against persons just because of who they are and what they sound like.

So I have to say as a historian it looks about par for the course for such a complex undertaking. As someone involved in the process, of course, I was impatient and wanted us to move along further, and wished there was less hyperbolic attack on those who were advancing this proposal.

You have here now a proposal whose time has come. It has been a long time, but I think this is the right time, and I don't know how else to answer you as directly as possible between then and now. You know, Secretary Marshall was on our Commission. I happened to see him this week. He proposed a telephone verification system. Most of you on the Commission thought Social Security was the way to go, but none of us really was as sophisticated in our thinking as the present proposal that you have embodied in 269 and that came from the U.S. Commission on Immigration Reform.

So we have learned. We didn't know it all then, and maybe the whole business of legislation, good, important, powerful legislation, having to take time—maybe that is right.

Senator SIMPSON. I think it is right. My experience here in 16 years is it takes about 10 years to pass an average, difficult, truly national bill. Thank you.

Senator Feinstein.

Senator FEINSTEIN. If I may—and pardon me for this, but I live in a different world, and the world that I am living in is a world where in the largest State in the Union the people have just voted to throw 300,000 kids, illegal immigrants, out of school; then, in addition to that, even when they were legal, throw their parents out. I think, in a way, it is a symptom of what is happening across the globe, and I believe governments are going to rise and fall based on their views of immigration.

What I am interested in really isn't as much philosophy; it is practical problem solving. What do you do to effectively deter and stop illegal immigration? We have never done it, and we have talked a lot and debated a lot, but there are no effective public policies to really deal with the problem. So people are left to their own frustration, and you have just seen the first instance of it play out on the ballot.

Let me ask each of you, in nonacademic terms, in precise terms as nearly as you can, what do you believe would be the three most important things, each one of you, that this committee could do to put into law practical proposals that would stop illegal immigration—not philosophical, practical, street-type proposals?

Mr. FUCHS. Do we have a timeframe on this?

Senator FEINSTEIN. I would take all day if he won't enforce the red light.

Mr. FUCHS. Do you have a time frame, not for stopping—and forgive me for this colloquy. I am sorry, Senator Feinstein, because

when you say stop it, you don't really mean stop it tomorrow. When you say stop it, I don't think you mean stop it so that even 5 years from now there is nobody in this country who is here illegally.

Senator FEINSTEIN. Mr. Fuchs, as far as I know, this country is the most generous in the world in terms of immigration.

Mr. FUCHS. Right.

Senator FEINSTEIN. We accept more people every year than virtually all other countries put together, and what is happening is that somewhere along the line our systems are bursting to the point where people actually vote and say throw all these kids out of school; we can't cope with it; our system can't handle it.

Now, what I am saying is how do you put into play a public policy system that is going to create specifics that are going to be workable with respect to work, with respect to benefits, with respect to border control. You are the experts now; you are the academicians. Come up with something that we can really do.

Mr. FUCHS. The first thing is political leaders must tell the facts to their people. When your Governor, Pete Wilson, in 1983, I believe it was, supported Senator Symms and some others in taking away from the INS its ability to have raids in open fields, warrantless—that is to say, without having to travel some distance to get a warrant—they took away an important enforcement tool of the INS. So the first thing is a consistent, intellectually honest approach to enforcement on the part of our political leadership. That is very important.

The second thing is a backing for the efforts now underway toward more effective border management. We were down there on the Commission for both El Paso and San Diego, and we are going to Nogales next week to see what we can see. We are impressed. Doris Meissner is doing a fantastic job under very great duress. So, that is the second thing.

The third thing is we have to say to the American people that the crux of this, the backbone of it, has got to be worksite enforcement, but we are not going to achieve that comprehensively overnight. So what we want to do is reduce the flow. We want to deter the flow. We want to get it to manageable proportions so we don't get something as crazy as prop 187, which is not only costly and divisive, but ineffective in deterring the flow. So political leadership is terribly important and we cannot promise the magic bullet.

Senator FEINSTEIN. Anybody else?

Mr. FIX. I would just like to second much of what Larry Fuchs has said. I think one of the great failures of the employer sanctions laws is the failure to emphatically enforce those laws in the informal economy.

Senator FEINSTEIN. In the—

Mr. FIX. Informal economy, as opposed to the formal economy. My bet would be that the employer sanctions are pretty well complied with in the formal, above-ground economy, in the 3M's and in the Allied Steels and in the major corporations. My sense is that where there is noncompliance is in the informal economy where the hiring of illegal workers is very much consensual. The two largest areas of the economy would probably be domestic labor and the other would be farm labor. As Larry has pointed out, there is a

major policy defect in the whole farm labor exercise, which is the open-fields warrants. So, that is one area.

In terms of worksite enforcement, I think you want to focus on the informal economy, and that suggests something that was suggested earlier by Larry, which is to shift responsibilities increasingly to the Department of Labor, which has more experience with this sector of the economy and a better track record in terms of regulation.

Second, I think it is important for the Congress to acknowledge the many things that are being done, the really full, frontal attack on illegal immigration that is going on in terms of policy sense right now. It ranges all the way from stay-at-home development with GATT, to the creation of offshore safe havens, to increased border enforcement, to substantially stepped-up worksite enforcement. I think we need to get the message across to the American people that there has been a strong response and that there is no magic bullet.

That said, reinforce stay-at-home development. That is probably the most effective; and, second, perfect this tool of offshore safe havens, the Guantanamo experience. I think that may be a very powerful way to address the issue. I am not sure we have got it quite right, but we are on the way.

Senator FEINSTEIN. Anybody else?

Mr. KEELY. Senator, if I can, NAFTA is probably the most important border enforcement legislation since the Texas Proviso of 1952, but that is a long-term kind of viewpoint. There is no reason why Mexico can't be the Italy of North America, so it is possible. Now, I say that knowing full well the problems of Mexico at this point, but it is a step in the right direction. If there is no economic development there, we have lost a great deal of the battle.

I would, second, reiterate what everybody has said. It is not a new idea. Worksite and DOL enforcement has been said—I have been in this business for 30 years. I have heard it said for 30 years, and the focus goes to INS and border enforcement, not so much to worksite enforcement.

My third idea would be, and perhaps this is too academic, but if, for example, in your State it is estimated that an undocumented alien costs your State, let's say, for purposes of discussion, \$20,000 a year—if somebody in your State hires a house maid for 5 years, 5 times \$20,000 is \$100,000. Maybe we ought to start making the employers pay.

My point here is focus on the employer. There is illegal migration in this country because there is a demand; there is an effective demand. Despite what you say on the Hill, there is an effective demand among employers. If you want to stop it, you have to stop that demand. It is as simple as that. So I would focus on the employer; let the employer pay.

Senator FEINSTEIN. Would you see, with respect to the employer, civil sanctions in terms of meaningful fines, as opposed to criminal sanctions?

Mr. KEELY. I am just not expert enough, but it seems to me what you do is you make it, from a business point of view, so expensive that you would not take the risk. It is basically a cost/benefit analysis for any employer, and right now in the informal economy—and

one can go on in all kinds of ways about how you can beat the system. The incentives are really not there to avoid hiring undocumented people; it is just not there.

Senator FEINSTEIN. Mr. Miller.

Mr. MILLER. In Europe, the response to the questions was let's augment the fines that employers pay. Actually, they got so high that labor inspectors in France won't apply them, so we have to be careful.

My recommendations for you would be vote in the employer verification document idea; allocate the money for personnel, both in DOL and other agencies, as well, so you have enough people enforcing the law, and then make sure that they have an adequate budget to do the investigations and what not. I like the idea of NAFTA and what not, but that is 20 or 30 years down the line and we need to act now.

Senator FEINSTEIN. Thank you very much.

Senator SIMON [presiding]. I apologize for being tied up elsewhere and not being here for your testimony. I understand that one or more of you have suggested that the Department of Labor be involved in this whole process of enforcement of our employer sanctions laws. How specifically would you involve the Department of Labor?

Mr. FIX. In a way, their role is already reasonably formalized with the wage and hour cooperation with the INS. I would expand their labor that they dedicate to that, and also their role is reasonably circumscribed in terms of the filing of notices of intent to fine and then prosecuting for those notices of intent to fine. You might want to consider giving them full enforcement power instead of just partial enforcement power, as is currently the case.

Mr. FUCHS. That is probably what I would do. I am not speaking for the Commission now. We haven't addressed the issue, but it is something we have thought about. Charlie says he has thought about it for 30 years; I have thought about it for 20 years.

You have had two cultures. You have had an INS culture, in which they are interested in enforcement, and when they got employer sanctions it really was new to them. It was something brand new, and they had the job of targeting employers to get those who did the illegal thing knowingly, willingly, and hired illegal aliens.

The Labor Department had a different mission and a different culture. It wasn't enforcement at all, except looking at wages and standards. They depended on illegal aliens in order to get tips for some of the bad things that employers were doing, but they would not cooperate with the INS because they didn't want to dry up their source of information.

So this Commission has been working hard to get them together, and Susan Forbes played a major role in that, and there is more cooperation and they have an agreement and they are working on it together. However, there are efficiencies and economy to be had by putting enforcement into DOL. There is a great strength in getting DOL enforcement-minded so that they see that their job is comprehensive; not just are these people being underpaid, are they working in a damp and cold factory, and so on, but also are they illegal aliens, so that you have got a focused, coordinated effort within one agency with a line of responsibility. This is the way I

think about it, and we end, then, this kind of divisive—you could call it a culture war in which there are two agencies with two different kinds of missions that sometimes come into conflict.

I like what Charlie said very much about the employer responsibility, what you experienced in California with the illegal immigrant bashing, when we are talking about human beings who are trying to, from their point of view, make a few bucks in order to take care of their families and in order to make their lives better, and when we have got a demand here for that and we have got politicians who often don't face honestly the fact that American citizen voters are creating that demand.

Senator SIMON. I regret I haven't read the statements of all of you. I have just quickly read yours, Mr. Fix, and started to read yours, Professor Fuchs, but let me quote just a little bit here.

"Refugees and elderly immigrants represent 40 percent of immigrant welfare users, but 20 percent of the immigrant population. Immigrants make up 28 percent of the SSI recipients, aged 65 and older, but they make up only 9 percent of the total elderly population." Those are pretty powerful statistics.

"Despite widely held beliefs to the contrary, illegal immigrants are eligible for, and apparently receive, very little welfare assistance." Then you talk about making that support more binding for the sponsor. I would be interested, and this will be my last question because that light is on there, in a dual question to all of you.

No. 1, if we want to make it more binding for the sponsors, how specifically would you suggest doing that? And you outline some ideas here, Mr. Fix. Then a second question that grows out of all these issues. We have been talking a lot about Social Security the last few weeks on the floor of the Senate, and as you look down to the year 2030 and beyond, we have a population that is growing older and older. Would it offend you or offend our ideals if, as we make preferences, which we do, we were to give a preference for people who are 30 and under in admission to our country?

Those are two questions for all of you. I get the two questions in so I don't violate Al Simpson's 5-minute time rule here.

Senator SIMPSON. I left you both with the gavel. I mean, you know, talk about trust. [Laughter.]

So go ahead.

Senator SIMON. Mr. Fix.

Mr. FIX. I have outlined in my testimony the ways to make that relationship more binding, and that is to make the affidavit of support legally enforceable. I think that could go some distance to disciplining sponsors. We also talk in our testimony of extending the deeming period across the board from 3 to 5 years, the period in which the income of the sponsor is deemed to be that of the immigrant for the purposes of qualifying for a select number of means-tested cash-transfer programs. We think that that may also help discipline sponsors, in effect, and forge a little further this responsibility the family feels for the immigrants that they sponsor.

Beyond that, in terms of the question of the preferences for people 30 and under, I don't know that that might be low, quite low, in the sense that we are going to miss a lot of extraordinarily productive people in their peak earning years. I think you also have to remember that even though we are making choices about who

is going to come in, you have to remember that immigration is not just driven by economic goals. It is also driven by the very powerful social goal of family reunification.

It is, in effect, a service to U.S. citizens. Most of those people who are coming in are coming in to unite with U.S. citizens. So rather than think of it as a service to immigrants abroad, it is really a way of helping our own people. So I think there are some problems with sharply curtailing immigration in this way.

Senator SIMON. I would add I don't think there is anything wrong with having our immigration policy serve economic goals, also.

Mr. FIX. Right.

Senator SIMON. I just pick 30 as an age arbitrarily. Maybe it ought to be 25, maybe it ought to be 35, but as you look at the demographic factors for the future, if you were just to say what is in our interest, then I think you would have to say that some preference given to an age factor makes some sense. At first, it is kind of a repugnant idea, but maybe—you know, someone who is an M.D. has a much better chance of getting into our country than someone who is a bricklayer. That may not be right, but it makes some economic sense for our country.

Mr. Fuchs.

Mr. FUCHS. I would defer to Charlie.

Mr. KEELY. I would just like to say, Senator, if you are suggesting that this age limit would increase the number of younger people, and therefore those younger people, having many more years until retirement, would help the Social Security system, unfortunately that is not going to work.

The demographic effect of immigration, even at current levels, if most of the people, or virtually all of the people were under 30, would have precious little impact in terms of what is known as person-years on the Social Security system. It is an idea which is intuitively attractive, but when you work out the mathematics, it doesn't get you very far.

Senator SIMON. I would just add there is no magic bullet for the Social Security system. It is a mosaic, and my question is, is this a legitimate piece in that mosaic.

Mr. FUCHS. It is so small. I don't have the numbers, but it probably—and I appreciate the originality of the thought and it is making me think, too, but the effect would be so small, and one would have to, in thinking about this, balance it against what you lose. When you have a system in which someone cannot bring over—you wouldn't be including spouses in this—a spouse who is over 30—

Senator SIMON. And I would not exclude people above whatever the age is, but give a preference, so that we would shift somewhat the numbers of people who come in below a certain age.

Mr. FUCHS. It would have some tradeoffs in terms of fundamental social policy. Family reunification is an asset in economic terms, too. That is one thing people don't think about, but families that are united are much more effective socially and economically as a unit than families that are divided. I can't, off the top of my head, get anything like numbers for you on that, but you would, by doing this, have some marginal support for the Social Security system, and Charlie could get the numbers more quickly than I could.

Senator SIMON. Mr. Miller.

Mr. MILLER. Senator Simon, I would quickly point out that there was an OECD-sponsored conference on migration and demography, and it produced a report and the conclusion from the report was—Charlie Keely gave you pretty much the conclusion there that immigration is just going to have a marginal effect on demography. Most migration involves young people as it is, but it is just not going to translate into stopping this aging process that we are in in all industrial democracies.

Senator SIMON. Thank you, Mr. Chairman.

Senator SIMPSON. Thank you, Paul.

Just a couple of questions more and then we will go on maybe another few minutes.

Mr. Miller, you noted that the primary responsibility for enforcing employer sanctions in Western Europe was generally in their equivalent of our Department of Labor, not of the Justice Department. Could you give the committee your views of the advantages and disadvantages of that approach?

And then in your testimony you emphasized that in order for sanctions to reach full potential, there has to be reliable verification of a person's eligibility for employment, and you refer to the fact that various European countries require legally-admitted aliens and citizens to have identity documents. Do any of those require they be carried on the person? What is the general view of that? You might just give us a brief commentary on that.

Mr. MILLER. Yes. It is my understanding that in those countries where—virtually all countries require legally-admitted aliens to have documents. That doesn't mean you have to have it on your person, but generally that you have to be able to produce it within 24 hours. I know in France, if you were involved in a car crash or something like that, the police would give you 24 hours to verify your identity. So it doesn't necessarily mean having it in your pocket or in your shirt, although in France, where the national I.D. card is not mandatory, although many people think it is, but it is not mandatory, I would say 90 percent of French citizens carry it, and most legally-admitted aliens in France carry a document. I tend to carry my passport when I am in France, or I would carry, when I was a student, my student permit.

There is no doubt in my mind that we have to move forward on the identity question if we are going to make employer sanctions work better here in the United States, and I was very pleased to read the bill; I thought there were safeguards in there. Everything I was looking for was there, and I commend you and your staff for your diligent work in producing that bill.

As to enforcement of employer sanctions, why is the labor ministry given kind of the lead role there? Well, it is because they are out in the field. They know the ins and outs; that is what they do. They go out and visit firms. In France, for example, a labor inspector has a right to go into any firm to see if it is complying with labor laws. Other enforcement agencies don't necessarily have that right to go in, so they are familiar with it.

The downside of it is some labor inspectors and controllers I have talked to in France over the years—I have interviewed many; some of them view enforcement of employer sanctions as kind of contrary

to their role. They feel that they are out there to protect the worker, and they can't protect the worker if they are going to find that he or she is an illegal worker.

Now, the French tried to get around this by saying that if an illegal worker is discovered in, say, a worksite visit, then the Government will help them recover their salaries and social security payments and things like that. I don't think that has worked particularly well because in the end the worker is expelled. The French have not succeeded in breaking the complicity between the illegal worker and the illegal employer by saying, we will recover your salary and give you some compensation for having been illegally employed.

Senator SIMPSON. I thank you. Let me just ask a question of Charlie Keely. You have taken a rather refreshing and courageous position in your statement, and most of us who have been involved all these years know that there is something deeply wrong with refugee and asylum policies. Most of the refugees we accept come directly from their country of nationality, and our asylum policy is so abused and ineffective that we have a backlog of applicants that will soon reach 500,000 cases, and that is not persons. Cases are about 2.5 persons per case, mathematically. Very few of them have any legitimate claim for asylum.

We know those things, and I share your view. We remember the things we were taught about refugees, about repatriation to the next country, and then third-country resettlement. That was the durable solution. Now, we have it all backward. We now go to third-country resettlement and then back to near-country resettlement, repatriation being last. It is all messed up; it is all backward. That is another matter.

But I share your view that the fair share of people in dire need, as we say, for the United States to resettle is well below 50,000, but I chose that number because we did describe that as a, "normal flow" in 1980. What can we do to assure that after limiting refugee admissions to 50,000 persons, legitimate refugees, precious-number refugees, that those 50,000 slots will not be used to resettle special groups of, "presumed refugees" in response to domestic political pressures?

What would you do to ensure that these precious refugee numbers go to persons who truly need resettlement in a third country for their safety or freedom, and is it realistic to believe that setting a numerical limitation will lead to more enlightened policies?

Mr. KEELY. Of course, the easy answer to that, Senator, is to say that members of the Senate and Congress have to resist. I am not elected, obviously, and—

Senator SIMPSON. Come to the floor some day when we are having that debate. It is a lonely debate.

Mr. KEELY. Of course, and there is no question—and I said to you, the cruellest hoax would be to put a cap on and continue that sort of advocacy tradeoff, and so on. One possible way to do this, however, is to look to the U.N. High Commissioner for Refugees, who keeps a list of persons in dire need, for whom there is, in the High Commissioner's view, virtually no other alternative.

That list is a list of somewhere between 40,000 to 60,000. It has been around that number. It is highly regarded by most people

around the world, those in human rights, as well as governments, who are very attentive to refugee issues, as a realistic list. One possibility would be to say that the United States would take—and you come up with a percentage, but I think we are not only a reasonable, but also a generous people—that we would take those hard cases, and I think Americans would be willing to settle those individuals.

The more difficult thing, however, is not only for Congress, but also for Congress to work with the administration to say how do we reorganize refugee relief around the world. It is not only the refugee relief; it is also the asylum systems both here and in Europe. If, again, we are going to be honest, they were developed within the cold war framework. That is over, and I would assume that members of the Congress and the Senate don't vote for defense appropriations as they did before 1989. Why should we keep a refugee system which was organized in one way for one geopolitical situation which was clearly oriented toward that? Why do we continue it?

Now, that does not mean that we end it. That does not mean we give up asylum. That does not mean any of those kinds of things, but what it does mean is that we re-look at where we put our emphasis. I think we can do a lot better in prevention and trying to bring around situations for repatriation, as opposed to resettling people in the United States.

Senator SIMPSON. Well, that is so vivid as to what we have done with refugees. To think that the bill of 1980—Senator Kennedy and his staff, and Jerry Tinker, I remember, all worked diligently. I was brand new. We thought, this is it, we have solved it, and then came the legions of those distorting the status of refugees. Now, imagine a presumptive status in the former Soviet Union, and these are our pals. The Soviet Union—the present commonwealth—these are our friends. In fact, the President gets assailed because of his friendship with President Yeltsin. Then we presume, just without even going case by case, that 40,000 people are presumed to be refugees. I just say, come on.

Mr. KEELY. But that has to be changed, Mr. Chairman, by Congress, not by the President.

Senator SIMPSON. Oh, yes, it has to be changed, but wait until you go to the floor and you get every known kind of criticism that you are mean, and it gets into racism, ethnicity; it is bizarre.

Mr. FUCHS. Mr. Chairman, you have fought the lonely fight on this, and Charlie is absolutely right on principle. To add, though, a footnote, a cold dash of water footnote, on it, my experience has been that when you raise the principle, or when Charlie, I, or others raise the principle in this field, domestic politics and foreign policy considerations are just terribly powerful, and you know that.

The very first question I was asked by one of your fellow Commissioners, then Secretary of State Cyrus Vance, as decent a man as one could have, a public servant of the highest order—he said, the question that interests me right now is are you going to keep refugee policy separate so that the State Department can have a major influence on what happens on allocation? I went around to all of you and said, what interests you the most. He said, that is what interests me the most.

Now, he was playing a role there. The sociologists have taught us some things, that there are such things as roles. He was Secretary of State, and that is still going to operate and be powerful, particularly in emergency situations, and domestic politics will still be powerful.

Senator SIMPSON. That is what George Shultz said when he left. He said to Ted Kennedy and I, I left you guys holding the sack on one issue, didn't I, refugees? And we said, you sure did by your definition of "State Department refugees" versus real refugees.

Mr. KEELY. Senator, may I ask one other thing? Again, kind of the cold water, but I am sure you wouldn't want to take a bet with me whether this particular provision is going to win or not, would you?

Senator SIMPSON. Well, I am going to tell the groups who are pushing it to drop by my office and get honest. That is what I am going to do. I am going to say, I know what you can do; you can win; you can go to that floor and you can win on that and portray anyone against it as being, you know, shriveled, but I will remember who is doing it. Other than that, I have no strong feelings in that area. [Laughter.]

Did you have any further comment?

Senator FEINSTEIN. No, I think not.

Senator SIMPSON. Paul.

Senator SIMON. Just one quick comment. Professor Miller, you mention in your written testimony that the French as of 1992 now require employers to declare all employees to the social security agency prior to employment. You call that experiment successful. If you can provide any kind of data for the record, I would be interested in seeing that.

Then one brief question to Professor Fuchs. We heard this morning that the Jordan Commission is going to be reporting in September on the whole question of legal immigration.

Mr. FUCHS. Chairman Jordan will testify here before you in June. The full report won't be published before September, but she will be ready to give you a summary.

Senator SIMON. So in June we should be able to move ahead with legislation, then?

Mr. FUCHS. On the legal immigration aspects, including the refugee aspects, I would hope so. But on the other stuff in 269 dealing with deterring illegal migration, it seems to me, could be on a faster track if you wanted to do that.

Senator SIMON. We may have a hard time getting two cracks at the Senate floor. I don't know. Al Simpson has more influence there than Dianne Feinstein and Paul Simon.

Senator SIMPSON. I think this time there is a lot of support out there on both sides. We would like to move it along separately. That would be my view, and move it. I think you always start to move something on Wednesday, and then by Friday they are all saying, I want to get out of here. So we will run it up Wednesday night and get it done and stack 58 votes for the next Tuesday. That is our plan.

Senator SIMON. Thank you all very much.

Senator SIMPSON. Thank you so much for your tremendous work over the years.

Now, the last, but indeed not least, remarkable group of people who will have spirited differences of opinion. We have Dr. Elizabeth Ferris, vice chair of the Immigration and Refugee Program, InterAction; Elisa Massimino, legal director of the Washington office of the Lawyers Committee for Human Rights; Gregory T. Nojeim, legislative counsel for the American Civil Liberties Union; David Simcox, senior advisor to Negative Population Growth, Inc.; Dan Stein, executive director of the Federation for American Immigration Reform; and Cecilia Munoz, deputy vice president of the National Council of La Raza.

It is good to have you all here. If you will go forward, we do have that time limitation, and I will start in the order as outlined on the program.

Dr. Elizabeth Ferris, please.

**STATEMENTS OF A PANEL CONSISTING OF ELIZABETH G. FERRIS, VICE CHAIR, COMMITTEE ON MIGRATION AND REFUGEE AFFAIRS, INTERACTION; ELISA C. MASSIMINO, LEGAL DIRECTOR, WASHINGTON OFFICE, LAWYERS COMMITTEE FOR HUMAN RIGHTS; GREGORY T. NOJEIM, LEGISLATIVE COUNSEL, WASHINGTON NATIONAL OFFICE, AMERICAN CIVIL LIBERTIES UNION; DAVID SIMCOX, SENIOR ADVISOR, NEGATIVE POPULATION GROWTH, INC.; DAN STEIN, EXECUTIVE DIRECTOR, FEDERATION FOR AMERICAN IMMIGRATION REFORM; AND CECILIA MUÑOZ, DEPUTY VICE PRESIDENT, NATIONAL COUNCIL OF LA RAZA**

**STATEMENT OF ELIZABETH G. FERRIS**

Ms. FERRIS. Thank you very much. As you know, I represent InterAction's Committee on Migration and Refugee Affairs. InterAction's Committee on Migration and Refugee Affairs consists of agencies that have worked with refugee protection, assistance, and migration for a number of years.

We are delighted to have the opportunity to come before you today and comment on this bill. We do feel, however, that an issue as important as refugee admissions deserves to be given focused legislative attention in the context of legal immigration, and we are a little puzzled and troubled about its inclusion in this particular bill. We would suggest that it be considered later when the bill on legal immigration comes to the floor.

We have comments on a number of parts of this bill, but in the interest of time this afternoon I will confine my remarks to two general areas where we have deep concerns; first, the question of refugee admissions and, second, the question of parole.

This bill requires congressional approval for refugee admissions above 50,000 in a given fiscal year. We would remind you that since the passage of the Refugee Act in 1980, the U.S. refugee admissions and resettlement program has been an integral part of overall U.S. refugee and human rights programs and policies. All of us can point to many lives that have been saved, the hope that has been restored, and many U.S. communities that have been enriched because of this.

In many ways, the refugee program has brought international issues home to Americans. It is one thing to watch the situation of

Somalia on CNN on your nightly news, and another to be working with a Somali family in your community.

But we do agree, and agree very much, with some of what Professor Keely said that our policies have been shaped by the cold war, and the world has changed since then. It is not just a question of which groups and which balance, or even numbers, but also the policies and procedures we use in resettling refugees reflect a different era of 15 years ago. In fact, if refugee resettlement is to be used the way it should be used, as an instrument of protection, those policies and procedures need to be changed.

Frankly, our policies and procedures are very cumbersome in comparison with other governments of the world. We have a hard time moving someone whose life is in danger that day to the United States. It takes months to go through all of the paperwork and different steps of the process, and we think that very clearly those procedures need to be changed.

Some of us hoped in 1989, in the joy and euphoria of the Berlin Wall coming down, that perhaps we would no longer have refugees and uprooted people in the world. I remember writing an article in 1989 saying what we can do with all the energy we will have. But, in fact, over the last 5 years we have seen an increase in the number of refugees. The end of the cold war hasn't meant an end to brutal dictatorships, to ethnic struggles, to blood baths in many parts of the world.

What we see when we look at it globally is that many of these situations are becoming more difficult. Repatriation is being stressed by the U.N. High Commissioner for Refugees, and indeed by our own Government. But repatriation is really tough, particularly when there are millions of land mines in an area to which refugees are going back.

Some of us are worried that perhaps we are pushing too hard on repatriation, particularly in situations like Rwanda or Somalia where the situations are far from stable. We see resettlement as a part, a small part, but a vital part of an overall U.S. refugee response.

We would like to see a system, for example, where the international community would come together around specific refugee situations, as we did with the Central Americans in the CIREFCA process, and ask the question not where does resettlement fit in, but rather ask the question of how can the needs of these uprooted people best be served, and to look at an overall package of responses which may or may not include resettlement.

With respect to parole, Mr. Chairman, all of our agencies who work with individual refugees have seen over and over again that the parole authority offers much-needed flexibility in dealing with humanitarian cases. All of us have stories of people who didn't fit the narrow criteria, but who needed, for humanitarian reasons, to come, and we can talk about those in the question period if you like.

It has also been the only rapid response tool the United States Government has had to respond to migration emergencies, to situations such as Cuba and Haiti. While we understand some of the concerns that are raised in this bill, we suggest that perhaps some

kind of informal consultation around the use of parole authority in large-scale influxes might be a way of moving forward.

We have seen that the parole authority offers needed flexibility in our refugee system, our immigration system, for both public interest and humanitarian parole. Whether for large-scale numbers of people, migration emergencies, or for individual cases, parole needs to exist both because of our own emigration needs and the needs of individuals who are sometimes caught in a system that seems crazy.

As Arthur Helton says, if the parole power didn't already exist, it would have to be invented to ensure an adequate emergency response. We would add it would have to be invented to meet the real human needs of medical cases of Haitians on Guantanamo who need to be evacuated for medical treatment, or a Vietnamese who didn't meet the strict family reunification requirements, or the Russian grandmother who couldn't survive if all of her relatives were resettled.

The issues before you are complex and far-reaching. They will affect the lives of many human beings. We hope that as you struggle with the issues and hear different political, academic, and bureaucratic interests, you will also keep in mind the people who aren't here, the millions of desperate refugees around the world.

Thank you.

[The prepared statement of Ms. Ferris follows:]

#### PREPARED STATEMENT OF ELIZABETH G. FERRIS

Senator Simpson and other esteemed members of the Senate Committee on the Judiciary, Immigration Subcommittee, I am Elizabeth Ferris, the Director of the Church World Service Immigration and Refugee Program which is a program ministry of the National Council of the Churches of Christ in the U.S.A. Thirteen main-line denominations participate in our work to resettle refugees, provide legal assistance to asylum-seekers, assist refugees overseas and advocate on behalf of uprooted people. I am also vice-Chair of InterAction's Committee on Migration and Refugee Affairs, and it is in the capacity that I am speaking to you now.

InterAction is a coalition of over 150 US-based non-profit organizations working to promote human dignity and development in 165 countries around the world. InterAction's diverse membership is active in a range of humanitarian, development, environmental, and human rights issues. Within InterAction, the Committee on Migration and Refugee Affairs (CMRA) focuses on US policy and programmatic issues of refugee protection, assistance and migration. Our organizations have local affiliates throughout all 50 states which resettle refugees and provide other direct services to newcomers.

Mr. Chairman, members of the Subcommittee, we welcome this opportunity to address you and particularly to comment on the Immigrant Control and Financial Responsibility Act of 1995, S. 269. An issue as important as refugee admissions deserves to be given focused legislative attention in the context of legal immigration, not just because of its fundamental importance but because of the public confusion and misunderstanding that so frequently surrounds this issue. Treating refugee admissions as a component of a comprehensive piece of legislation on enforcement does a disservice to the public review that both refugee and immigration issues deserve. We suggest that the provision on refugee admissions, Sec. 174, be struck from this bill and considered with other legal immigration provisions when they are brought before this committee.

There are several sections of the bill which we support—notably the intent to impose criminal penalties on those who are convicted of preparing fraudulent asylum applications. The import of Sec. 134 is that it does not further penalize the persecuted, making them the victims twice over—but reaches those that take advantage of such desperate and vulnerable individuals. We support steps being taken to make the current system more effective and responsive. It is positive to see steps taken to affirmatively address the asylum application backlog, Sec. 173, through an

increase of resources for a concentrated period of time in a creative and fiscally responsible way.

There are other sections of the bill where we have other concerns. For example, those provisions, Sec. 171, which provide that people traveling with false or no documentation be excludable and be dealt with in a special proceeding. It appears they would have less opportunity to establish claims of refugee status. In some countries, it is impossible for someone experiencing political persecution to obtain a valid passport. It seems counter to the reality of refugee situations to introduce additional obstacles to a hearing before a qualified adjudication.

On still other issues contained in the bill, there is not consensus among the voluntary agencies. For example, some agencies agree with the need to increase control of the US-Mexico border as a way of responding to legitimate concerns about illegal immigration. Other agencies, particularly the faith-based agencies, are concerned with the consequences of militarizing the border, especially as a large percentage of illegal immigrants to the United States do not enter via the southern border. We agree that any effective enforcement policy must also address the problem of those who overstay their visas. Some of the agencies may in fact submit written testimony to the committee on these and other issues.

Today, I will confine my remarks to two general areas where the voluntary agencies have specific concerns and particular expertise: refugee admissions and parole. As the legislative process on S. 269 bill continues, we would be happy to provide more technical input into some of the specific sections of the bill. Reform as comprehensive as that in this legislation needs considered input from all groups.

#### REFUGEE ADMISSIONS

Title I, Subtitle B, Part 2, Section 174 of the Immigrant Control and Financial Responsibility Act of 1995, S. 269 requires congressional approval for refugee admissions above 50,000 in a given fiscal year. Since the passage of the Refugee Act of 1980, the United States' refugee admissions and resettlement program has been an integral part of overall US refugee and human rights programs and policies. All of our agencies can point to countless examples of lives saved, of hope restored, and of US communities enriched as a direct result of US refugee admissions policies. The products of a unique government-private sector partnership, the resettlement programs have been a prime example of this country's compassion and capacity to respond to some of those in need.

US resettlement policies have also been an example for other countries to uphold their commitment to international obligations and to admit refugees. The United States has provided generous support for international institutions (such as UNHCR) and for aiding refugees in countries of first asylum. But, most importantly the past decades demonstrate that the United States has welcomed refugees, successfully welcomed refugees, to settle here.

Resettlement is also the means by which Americans become linked to the international refugee crisis, develop a keener appreciation of its human dimensions and invest in its solution. Resettlement brings the international refugee issue to the attention of American communities in an essentially compelling manner.

But we have to recognize that US refugee admissions and resettlement policies have also been dominated by US foreign policy concerns and particularly by the Cold War context in which they were developed. The vast majority of refugees resettled in the United States since World War II have come from communist countries. The present structures and procedures of refugee resettlement date back fifteen years—to the US Refugee Act of 1980. Those procedures responded to the needs of that era—a time when the US was struggling to respond to major global refugee crises in Southeast Asia, Afghanistan and Central America. The policies and the procedures need to change. The world has changed.

Unfortunately, the changes in the refugee situation have been negative, rather than positive. Many of us had hoped that an end to the Cold War would bring an end to many of the world's blood baths—and allow most of the world's refugees to return home. But the post-Cold War world continues to be characterized by brutal ethnic and political conflicts and by authoritarian governments who persecute their people. The legacy of wars begun in the late Cold War era, in places like Afghanistan, continues to take its toll on civilians. Far from diminishing, the number of refugees has increased by a third since the Berlin wall was torn down—from 14.9 million in 1989 to about 22 million today—while internally displaced people number perhaps 26 million.

While the need for refugee protection and assistance on a global level has never been greater, and while the need for US resettlement continues, we need a fundamental re-shaping of the way we conceptualize resettlement. However, this does

not lead to the conclusion that the answer is a cap on refugee numbers. There is much that is good about US refugee resettlement which needs to be preserved. We believe that the current government-private sector partnership has a vital part to play in US refugee policies now and in the foreseeable future. We see that refugee resettlement: protects individual refugees for whom no other solution is possible; upholds family values of reuniting family members; promotes burden-sharing and respect for first asylum; demonstrates active US leadership and commitment; and brings out the best in our communities and contributes to our sense of who we are—a nation of immigrants and refugees.

But most fundamentally, we believe that refugee admissions should be shaped by the world in which we live. When the Refugee Act of 1980 was passed, the number of refugees in the world was about 8.2 million—and we weren't even counting internally displaced people.<sup>1</sup> In 1980, the so-called normal flow of 50,000 represented 0.6 percent of the world's refugee population; the same 50,000 divided by the 22 million refugees is one-third that number: 0.2 percent. In fact, this 50,000 normal flow as an average figure. No year has ever been 50,000; admissions have always been much higher or lower. The whole concept of 'normal flow' of refugees seems a contradiction in terms; if anything, our refugee policy has become too routinized and bureaucratized. We would like to seek US policies and structures which could respond quickly to the needs of people whose lives are in danger now. A cap on admissions will contribute to inflexibility in a program that needs maximum flexibility. There are also concerns about introducing further political considerations into a refugee admissions program. We believe that a process that makes the protection of refugees primarily a function of congressional debate for each impacted group could dangerously politicize the US admission program.

The current law provides for an annual consultation process between the Congress and the State Department on refugee admissions. Rather than coming up with a new mechanism for asserting Congressional control over refugee admissions, we would encourage you to explore ways in which the consultation process could address your concerns. Perhaps such consultations could be held more often, or perhaps they could focus on some of the 'big issues'—such as the role of refugee resettlement in the post-Cold War era. In addition to the consultations, there are mechanisms through the budget process which provides another legislative review for the numbers of refugee admissions into the United States. More explicit flexibility must be preserved rather than micromanagement of the executive branch functions.

Senator Simpson, you have long advocated a policy that would be truly responsive to the refugee situation. US refugee resettlement policies should correspond to the number of refugees in the world. At a time when that number is increasing, to reduce admissions of refugees by half is inconsistent with reality. In an ideal world, where humanitarian values were the only determinant of US admissions policies, perhaps we would see the admission of refugees to the US in proportion to the regions in which they're uprooted—so if 1/6 of the world's refugees are from former Yugoslavia, 1/6 of refugee admissions to the United States would be from former Yugoslavia. And we would develop procedures and policies to make that possible. But of course we don't live in an ideal world—lots of other factors go into US resettlement policies besides human need. And resettlement isn't by any means the only answer to the world's refugee populations. Nor is the United States the only country with generous refugee admissions policies. Although the number of refugees resettled by the United States is the highest in the world, several other countries have admitted larger numbers per capita.

As the number of uprooted people around the world increases, their situations become more precarious. Governments of both North and South are devising new ways of keeping people outside their borders. Having lived and worked in Europe for 8 of the past 10 years, I've seen the range of efforts used to deter people from even arriving on borders to make their asylum claims—both people fleeing for their lives and those seeking to exploit generous asylum policies. Unfortunately, the bottom line is that while European governments were able to limit the growth in asylum applications, many people seeking safety from persecution have been returned to face persecution and death.

And in the regions where 98% of the world's refugees live, conditions are becoming much worse. Even in those cases where peace agreements are signed, refugees can't always return home. The number of refugees who exist on the margins of the world's attention, as the Liberians, Angolans, and Tajiks presently do, is likely to

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<sup>1</sup>(That figure was considered high at the time—the number of refugees in 1970 was 2.5 million and in 1960, 1.4 million. UNHCR, *The State of the World's Refugees* (New York: Penguin Books, 1993) as cited in Hal Kane, "Refugee Flows Swelling," *Vital Signs 1994* (Washington, DC 1994, pp. 106-107).

increase. The media-driven nature of the response to refugee emergencies is a fact of life for all of us involved in emergency assistance. But while there is an outpouring of concern—and money—for the ‘emergency of the month,’ there are many who are just as needy but whose faces we never see. All actors—UN agencies, governments, non-governmental organizations—are running into greater logistical difficulties and increased ethical questions in assisting refugees in their regions. The pressures for repatriation will increase in the coming years as economic conditions in host countries becomes more difficult and as UNHCR faces financial difficulties in responding to refugees who are not of strategic or humanitarian interest to major powers. As it becomes more difficult to find asylum in neighboring countries, a larger proportion of the world’s uprooted will be “internally displaced” rather than refugees—and thus outside the formal responsibility of United Nations organizations.

Refugee resettlement in the United States has to be seen in the context of US humanitarian response to refugees globally. Admission of refugees into the US for resettlement is a very small part—but a vital part—of overall US refugee policy. Under the present system, admissions numbers are set every year by Congress in consultation with the State Department and should provide a mechanism for addressing new directions in US resettlement policy. At the international level, we would like to see a process where in major refugee emergencies—such as Bosnia and Rwanda—governments and international organizations come together to respond in a coordinated way to meet the needs of uprooted people. In such cooperative endeavors, the focus would be on meeting the needs of the victims of violence and persecution through a variety of means in the context of a commitment to sustainable peace. In some situations, such as Bosnia, refugee resettlement in the United States might play a role in an overall international package of solutions. In other situations, resettlement might not be a part of any package. CIREFCA, the coordinated international response to Central American refugees and displaced people, is a good model for how this approach could work on the international level.

We are learning that peace processes are very fragile and that the presence of large numbers of refugees on a country’s borders can be a pressure for violence and instability. Regional stability is in the national interest of the United States. In these situations, resettlement of some refugees outside of the region could play a positive role in conflict-resolution—or at the very least, ease some of the pressures on fragile governments.

The other major component of refugee admissions is, of course, the domestic political and social context. In the United States, a growing backlash against immigrants is evident in public opinion polls and is manifest in policies at the national, state and local levels to control the illegal entrance of immigrants and to reduce the number of legal immigrants (including refugees) and the benefits they receive. This backlash stems from several factors, including the shifting composition of immigration to the US (with two-thirds of immigrants to the United States coming from Asia and Latin America) and the efforts to scapegoat foreigners as a convenient explanation for failed economic and social policies. Economic insecurity and the collapse of the Soviet Union have contributed to an ‘inward-looking’ focus of American opinion where there is not only less interest in responding to global problems, but a greater concern with protecting our country from the effects of global unrest through border control.

But even in such a climate where many Americans are concerned about their jobs and their communities and where public opinion supports efforts to control illegal immigration, there is still substantial support for refugee admissions. Public opinion polls which ask respondents about particular cases—for example, should brothers and sisters of refugees be allowed to enter the United States?—find a much more welcoming attitude than responses to more general questions about levels of immigration. We find that churches are eager to sponsor refugees from Bosnia and Sudan, for example. The outpouring of local support enabling refugees to begin new lives is a humbling experience.

For many years, the United States has been a leader in refugee resettlement, and the impact of a sharp decline in refugee admissions would have consequences far beyond our borders—much as a decline in the US stock market has repercussions around the world. Our refugee program is the stated humanitarian component of our immigration policy, and we believe that decisions on admissions numbers must be based primarily on issues of persecution and humanitarian considerations. The impact of a 50,000 cap on refugee admissions, as proposed in this bill, would have consequences to the US as a world leader as well as consequences for governments and refugees beyond our borders. It could de-stabilize tenuous international situations and negatively impact our foreign policy interests. In addition to our humanitarian concerns, it is in our national interest to ensure that not only people fleeing violence have a place to go, but that their presence does not contribute to regional

instability. Such a precipitous change would neither respond to the humanitarian needs of refugees, nor would it be in our national interest.

#### PAROLE

Chairman Simpson, fellow members of the Subcommittee, I would now like to address the proposed amendments to Section 212(d)(5) of the Immigration and Nationality Act through Subtitle B, Part 1, Sec. 161 and Sec. 162 of S. 269, which would tighten the Executive's parole authority. These sections would change the reasons for exercising parole authority. They would require case-by-case determinations and provide that the numbers of parolees who remain in the US beyond one year be deducted from the world-wide level of immigrants permitted entry for the subsequent year.

As voluntary agencies which work with individual refugees, we have seen over and over again, that the parole authority has been a much-needed flexible tool in US immigration policy. It has also been the only rapid-response tool the US government has had to respond to migration emergencies. In spite of the struggle in both the Congressional and Executive branches at various times over the interpretation of this provision, it has served as a humanitarian instrument to respond to these emergency situations. The US government has clear obligations under international law to respond to individuals—even large numbers of individuals—who arrive on our borders, claiming that their lives are in danger if they are sent back. We need to be able to respond to the, very concrete human needs with speed and a minimum of bureaucratic red tape. This cannot be achieved with restricting the ability of the executive branch to respond. Efficient means by which to address an emergency situation or one of compelling interest is compromised through limitation. Perhaps one solution which would not undermine the intent behind the provisions related to parole authority in the 1980 Refugee Act, would be to provide a mechanism for informal notifications or consultation when there must be a response to a large mass exodus.

There are lots of people who do not meet the narrow criteria for refugee status under US and international law, but who nevertheless are of legitimate humanitarian concern either as part of a mass exodus, persons fleeing war, civil strife or as individuals in specific humanitarian circumstances. These are people, who often need a reprieve from the circumstances in which they find themselves but fall between the cracks in US refugee policy. The executive's parole authority has made a concrete difference in the lives of these people. One of the many examples is the case of a Zairean widow and mother of six children who ranged in age from two to sixteen years. When the military revolted in the early 1990s, the US decided to evacuate American citizen children. This woman's three oldest children (ages 11, 14, and 16) were US citizens and thus were to be evacuated. Without the flexible tool of parole authority, either the older children would have left Zaire on their own, without their mother or siblings, or they would have remained behind with their mother and faced possible death. These situations call for flexibility and speed.

We believe that the parole authority offers needed flexibility in the US immigration/refugee system, for both Public Interest and Humanitarian Parole. Whether for large-scale refugee emergencies or for individual cases, parole needs to exist to meet both US immigration needs and the needs of individuals who are caught in a system that often seems crazy. As Arthur Helton says, "If the parole power did not already exist, it would have to be invented to ensure an adequate emergency response."<sup>2</sup> And we would add, it would have to be invented to meet the real human needs of medical cases of Haitians on Guantanamo who needed to be evacuated for medical treatment to the United States, of Vietnamese who didn't meet the strict family reunification requirements, or the Russian grandmother who couldn't survive if all of her relatives were resettled in the United States.

Once again, we thank you for the invitation to testify before this Subcommittee. The issues before you are both complex and far-reaching. They will affect the lives of many human beings. We hope as you deliberate on the legislative complexities around each of these issues, that you keep in mind not only the political and bureaucratic interests which will be represented in your meetings—but desperate people who are fleeing violence and persecution and whose faces you probably won't see here.

Thank you.

Senator SIMPSON. Thank you very much.

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<sup>2</sup>Arthur C. Helton, "Immigration Parole Power: Toward Flexible Responses to Migration Emergencies", Interpreter Releases, vol. 71, no. 47, 12 December 1994, p. 1638.

Now, Elisa Massimino.

### STATEMENT OF ELISA C. MASSIMINO

Ms. MASSIMINO. Thank you, Mr. Chairman and members of the committee. I appreciate the opportunity to be here and share with you our views about these important issues.

My organization is dedicated to the protection and promotion of human rights around the world, and, as an outgrowth of that focus, has a particular concern for the human rights of refugees, the tangible evidence and product of human rights abuses.

Your hearing today is focused on a broad and complex set of issues concerning immigration generally, and I commend you and the committee for addressing them in such a thoughtful manner. My remarks will focus on a small and particularly vulnerable subset of the immigrant population, those who come to the United States seeking refuge and relief from persecution.

Nothing I have heard today would lead me to believe that we disagree on the definition of "refugee" and on the fact that we ought to do our best to protect those who meet the definition. Nearly all the witnesses who have appeared before you in this hearing, as well as you and other members of the committee, have expressed a desire to ensure that proposals to limit illegal immigration not unfairly impact those we intend to protect.

Where there is disagreement, however, it appears to be over the methods we use to identify and protect refugees from persecution. In formulating our views on this issue, we look to the international standards of protection set forth in the refugee treaties. We have also availed ourselves of the expertise of an organization which specializes in the identification and protection of refugees, the office of the U.N. High Commissioner for Refugees.

In particular, we have looked to the conclusions of the executive committee of UNHCR, made up of representatives of 47 states, including the United States, which meets each year and has addressed many of the problems with which we concern ourselves today.

Aspects of some proposals which are currently under consideration are of concern to us because of their potential impact on refugees. We seek simply to ensure that the reform proposals under consideration do not create an unreasonable risk that genuine refugees will be sent back to places where they will be persecuted or that they are punished in some manner for their manner of entry.

Proposals to increase the penalties for document fraud and for failure to present valid documents on arrival in the United States concern us primarily because of some cases, although they are few, where refugees, some of them torture victims, have been prosecuted and incarcerated under these provisions, obtaining release only when the asylum adjudication system finally recognized their claims for refuge as valid.

We suggest, as has UNHCR, that penalties for document fraud be directed at those who are in the business of producing these documents and not at those who are forced to use them to escape torture. At the very least, prosecution and incarceration under these provisions ought not to be undertaken against asylum seekers unless their claims have been found to be abusive or unfounded.

Proposals to summarily exclude or prevent from entry into the United States those who arrive here without valid travel documents also raise some concerns. We have outlined in our written testimony a number of specific suggestions based on international standards for asylum adjudication procedures. We turn frequently for guidance, as I have mentioned, to the executive committee of UNHCR in considering such proposals, and we commend their conclusions to members of the committee as you grapple with these very difficult issues.

The problem of large numbers of individuals presenting manifestly unfounded claims for protection and the burden this problem places on recipient states has been recognized and considered by the UNHCR executive committee. Our key suggestion for inclusion in any expedited exclusion proposal echoes the views of UNHCR that these truncated procedures be directed only at those who present manifestly unfounded claims or abusive claims for asylum, or who present no claims for relief at all.

Modifying the current proposals in this way would incorporate the fundamental reality that many genuine and deserving refugees are faced with the choice of submitting to torture or fleeing with the aid of false documents. It is a reality I see every day in my work. Possession and use of a fraudulent document for entry by asylum seeker may bear absolutely no relationship to the validity of the asylum claim. Thus, we must be very careful to craft our laws so that we do not equate fraudulent documents with fraudulent claims for refuge.

To my understanding, we would accomplish our goals much more efficiently, with less risk of violating our international human rights obligations, if proposals for expedited exclusion focus on those who present manifestly unfounded claims for admission.

Finally, just briefly, I would like to address the proposals which seek to retract from the President the discretion to determine, in consultation with Congress, the number of refugees to be admitted to the United States each year.

Most of the proposals I have seen would set future limits at less than one-half of the number admitted in recent years. Clearly, these proposals are not linked to a decline in the number of refugees worldwide. The number of individuals and families forced to flee their homes in the face of persecution is, as we have heard, on the rise.

If the impetus for reducing the number of refugee admissions is the belief that those being admitted under the current system are not always the most in need of protection, we would suggest that rather than limiting the total number of admissions, the United States would better serve its interests by reforming the overseas refugee processing procedure.

My organization has submitted a petition for proposed rule-making to the Departments of State and Justice which includes suggestions for reforming the methods by which the United States identifies and selects for resettlement overseas. These suggestions are designed to ensure that those most deserving of protection are chosen to fill the limited number of slots designated for refugee immigrants.

Finally, the United States has a strong interest in promoting burden-sharing among refugee-receiving states. In light of its long tradition as a haven for victims of persecution, reducing refugee admissions to a fixed limit at less than half the number admitted in recent years sends the wrong message to other countries, many of which have fewer resources and are hosts to much larger numbers of refugees than the United States.

Thank you. I see my time is up, and I look forward to your questions.

[The prepared statement of Ms. Massimino follows:]

#### PREPARED STATEMENT OF ELISA C. MASSIMINO

##### I. INTRODUCTION

Chairman Hatch and members of the Committee, thank you for inviting the Lawyers Committee to testify on the critically important issue of immigration reform. Since 1978, the Lawyers Committee for Human Rights has worked to promote international human rights and refugee protection, including the provision of asylum to refugees on a fair and non-discriminatory basis.

I am the Legal Director of the Committee's Washington office. In this capacity, I work primarily on issues concerning refugees and asylum. In the course of our efforts to promote the human rights of refugees, we have endeavored to ensure that all nations, including the United States, understand and abide by their obligations under international law. It is from this perspective that we offer our testimony on the various proposals now under consideration, focusing on those we believe will affect the rights of refugees in the United States and around the world.

Refugees, by virtue of their situation, are often forced to flee persecution in irregular and unauthorized ways. They may have no travel documents (passports or visas) or even identification papers. Indeed, when individuals are able to obtain passports or permission to leave their home countries, they frequently must explain such official solicitude in order to establish a claim for refugee protection. Victims of torture and political persecution from Afghanistan, Iraq, Sudan and Tajikistan often flee to the United States without official travel documents and with nothing but the desire for freedom from oppression.

Our testimony today is animated by three basic principles. First, any reforms in the U.S. asylum system should not violate international obligations or deny constitutional entitlements. Second, the United States should not deviate from international standards concerning the protection of asylum seekers. Third, reform should encourage international cooperation and burden-sharing in the formulation of world refugee policy. We begin with an outline of these principles and conclude with an analysis of specific legislative proposals.

##### II. INTERNATIONAL OBLIGATIONS AND CONSTITUTIONAL ENTITLEMENTS

###### A. Criteria

The 1951 Convention relating to the Status of Refugees (189 U.N.T.S. 137) and its 1967 Protocol (606 U.N.T.S. 267, 19 U.S.T. 6223), to which the United States acceded in 1968, provides, in pertinent part:

the term "refugee" shall apply to any person who \* \* \* owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.

The United States incorporated this standard into its domestic laws in the Refugee Act of 1980.<sup>1</sup> The treaty definition has now been subscribed to by 127 countries in addition to the United States.

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<sup>1</sup> Pub. L. No. 96-212; See *INS v. Cardoza-Fonseca*, 480 U.S. 407 (1987).

### B. Remedy

While there is no categorical right to receive asylum at the international level,<sup>2</sup> there is a well-established individual entitlement of a refugee not to be returned to a place where he or she may experience persecution. The 1951 Convention, in Article 33(1) provides:

No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

This right of non-refoulement is the foundation for all refugee protection and is so fundamental as to have achieved the status of customary international law, binding even on States that have not acceded to the refugee treaties.<sup>3</sup> The United States incorporated substantial aspects of the treaty obligation into its domestic law by amending its withholding of deportation statute in the 1980 Refugee Act.<sup>4</sup> Congress specifically enacted the Refugee Act to create more humane and effective procedures for dealing with refugees, and to bring the United States into compliance with its obligations under international law.<sup>5</sup>

U.S. courts have found that the right of non-return, as embodied in U.S. law, constitutes a federally-created liberty interest of which an individual cannot be deprived without constitutional due process of law.<sup>6</sup>

### III. PROCEDURAL STANDARDS AND ENTITLEMENTS

#### A. International standards

The international legal regime leaves largely to the legal traditions and cultures of the individual States the precise nature of the procedures by which to determine whether individuals are refugees who deserve protection. However, minimum international standards have been promulgated. The most advanced version of those standards was issued by the Office of the United Nations High Commissioner for Refugees (UNHCR), the U.N. body charged with supervising the application of the refugee treaties, in connection with litigation challenging the adequacy of status determination procedures for Vietnamese asylum seekers in Hong Kong. UNHCR set forth the following guidelines for adjudication procedures:

The applicant should receive the necessary guidance as to the procedure to be followed (para. (e)(ii) of Conclusion No.8).<sup>7</sup> Given the vulnerable situation of an asylum seeker in an alien environment, it is important that he/she should on arrival receive appropriate information on how to submit his/her application. Such advice is most effective on an individual basis and is provided in many countries by legal counseling services, funded by government, UNHCR or non-governmental sources.

The applicant should be given the necessary facilities, including the services of a competent interpreter, for submitting his case to the authorities concerned (para. (e)(iii) of Conclusion No. 8).<sup>8</sup> This requirement entails, first of all, that the applicant should be given the opportunity to present his/her case as fully as possible. As refugee status is primarily an evaluation of the applicant's statement, the quality of the

<sup>2</sup> The Universal Declaration of Human Rights, in Article 14(1), declares that "[e]veryone has the right to seek and enjoy in other countries asylum from persecution." General Assembly Resolution 217A (III) of 10 December 1948. See G.S. Goodwin-Gill, *The Refugee in International Law* (1983) at 101–123 (discussing asylum as a form of discretionary State power).

<sup>3</sup> See Goodwin-Gill, *supra* note 2, at 69–100.

<sup>4</sup> See INS v. Stevic, 467 U.S. 407 (1984). While the Court determined that Congress had intended to continue to utilize a domestic law standard (probability of persecution) in adjudicating withholding claims, it suggested that the Attorney General, through an exercise of discretion in asylum adjudications, could avoid any incompatibility with international standards. *Id.* at 428–30 n.22.

<sup>5</sup> See S. Rep. No. 256, 96th Cong., 1st Sess. (1979); 125 Cong. Rec. 23,231 (1979); Refugee Act of 1979: Hearing on F.R. 2816 before the Subcomm. on International Law of the House Comm. on the Judiciary, 96th Cong., 1st Sess. (1979) at 27.

<sup>6</sup> See *Augustin v. Sava*, 735 F.2d 32 (2d Cir. 1984); *Yiu Sing Chun v. Sava*, 708 F. 2d 869, 876–77 (2d Cir. 1983); *Haitian Refugee Center v. Smith*, 676 F.2d 1023, 1039 (5th Cir. 1982); *Nunez v. Boldin*, 537 F. Supp. 578, 584 (S.D. Tex.), appeal dismissed, 692 F.2d 755 (5th Cir. 1982). See also *Orantes-Hernandez v. Smith*, 541 F. Supp. 351, 378 n.33 (C.D. Cal. 1982).

<sup>7</sup> Reference is to Conclusion Number 8 on the Determination of Refugee Status, adopted by the governmental Executive Committee of the UNHCR Programme, 28th session (1977); see also UNHCR, "Handbook on Procedures and Criteria for Determining Refugee Status" (1979), at para. 192 (hereinafter, "Handbook").

<sup>8</sup> *Supra* note 7.

interview is crucial to a proper determination of the claim. Paragraphs 196–205 of the Handbook<sup>9</sup> deal with this aspect of the procedure and make it clear that “while the burden of proof in principle rests on the applicant, the duty to ascertain and evaluate all the relevant facts is shared between the applicant and the examiner” and also that the examiner should “ensure that the applicant presents his case as fully as possible and with all available evidence.” The interviewer therefore has a particular responsibility to ensure that the interview is comprehensive and the records reflect accurately what has been said. The reference to “necessary facilities” could, in UNHCR’s view, also include legal advice and representation, if the applicant requires these in order to present his case properly.

If the applicant is not recognized, he should be given a reasonable time to appeal for a formal reconsideration of the decision, either to the same or different authority, whether administrative or judicial, according to the prevailing system (para. (d)(vi) of Conclusion No. 8).<sup>10</sup> Although this requirement is phrased in general terms, in UNHCR’s view the notion of “appeal for a formal reconsideration” includes some basic principles of fairness applicable equally to judicial or administrative reviews, such as the possibility for the applicant to be heard by the review body and to be able to obtain legal advice and representation in order to make his submission; for the reconsideration to be based on all relevant evidence; and for a consistent and rational application of refugee criteria in line with the guidelines established in the UNHCR Handbook. UNHCR believes that the notion of fairness also requires the review body to provide that grounds for its decision, so that the applicant can be reassured that he has had a fair hearing and the criteria have been applied properly.

The application should be examined by “qualified personnel having the necessary knowledge and experience, and an understanding of an applicant’s particular difficulties and needs” (UNHCR Handbook, para. 190).<sup>11</sup> An understanding of the application of refugee criteria as well as a knowledge of the situation in the country of origin are necessary, in particular, for assessing an applicant’s credibility and the well-foundedness of his fear of persecution.

The applicant should be granted the benefit of the doubt if his statement is coherent and plausible and does not run counter to generally known facts (paras. 203–204, UNHCR Handbook).<sup>12</sup> Because of problems of obtaining evidence to substantiate a refugee claim, and the serious consequences which could result from an erroneous decision, the evidential requirements should be approached with flexibility.<sup>13</sup>

#### *B. Domestic entitlements*

Constitutional due process is a flexible concept. In the immigration context, additional uncertainty is added by virtue of the somewhat differential treatment of unadmitted aliens.<sup>14</sup> To determine the amount of process due, the Supreme Court has established a balancing test which weighs the various interests involved in an adjudication. The Court has held:

[I]dentification of the specific dictates of due process generally requires consideration of three distinct factors: First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and, finally, the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirements would entail.<sup>15</sup>

<sup>9</sup> Id.

<sup>10</sup> Id.

<sup>11</sup> Id.

<sup>12</sup> Id.

<sup>13</sup> UNHCR, Note on the subject of the role of UNHCR in the Hong Kong procedure for refugee status determination (1990).

<sup>14</sup> See Association of the Bar of the City of New York (Committee on Civil Rights), *The Right to Recognition as a Person Before the Law: The Case for Abolishing the Immigration Law Entry Doctrine*, 46 *The Record* 304 (1991).

<sup>15</sup> *Mathews v. Eldridge*, 424 U.S. 319, 335 (1976). See *Goldberg v. Kelly*, 397 U.S. 254 (1970), holding that due process requires that a public assistance recipient be afforded an evidentiary hearing before the termination of benefits. In *Goldberg*, the Court held that, at a minimum, a welfare recipient is to have timely and adequate notice detailing the reasons for the proposed termination, an effective opportunity to defend by confronting any adverse witnesses and by presenting arguments and evidence orally. The Court also held that a recipient must be allowed to retain counsel, and that denial of benefits must be accompanied by stated reasons set forth by an impartial decision maker.

This judicial test is used to determine when the federal courts will intervene to declare procedures unconstitutional. Congress is free, of course, to legislate more ample provisions. These principles should inform the evaluation of the proposals at issue here.

#### IV. THE INTERNATIONAL CONTEXT

The Preamble of the 1951 Convention reiterates the determination of the High Contracting Parties to assure refugees the widest possible exercise of the fundamental rights and freedoms embodied in the Charter of the United Nations and the Universal Declaration of Human Rights. Specifically, the Preamble urges all States to "do everything within their powers to prevent this problem from becoming a cause of tension between States," it recognizes that "the grant of asylum may place unduly heavy burdens on certain countries, and that a satisfactory solution of a problem of which the United Nations has recognized the international scope and nature cannot be achieved without international cooperation."

Currently, more people are in flight from persecution, war, human rights violations and other events seriously disturbing public order than at any time since World War II. The UNHCR reports over 17 million refugees around the world<sup>16</sup> who have crossed an international border and who have a fear of persecution upon return.<sup>17</sup>

In the United States, more than 400,000 asylum seekers have requested protection under the asylum provision of the Refugee Act of 1980. The admission of 121,000 refugees was authorized in 1994 under the overseas admissions program established by the Refugee Act.<sup>18</sup>

#### V. SPECIFIC PROPOSALS

##### A. Penalties for document fraud

At least one proposal currently being considered would deny the right to apply for asylum, except in extraordinary circumstances at the discretion of the Attorney General, to aliens who arrive in the United States without proper travel documents. Aliens who lack appropriate documentation would be subject to expedited exclusion procedures (discussed below) unless they could show that their use of fraudulent documents "was necessary for direct departure from a country in which (or from which) the alien has a credible fear of persecution (or of return to persecution)." In light of the well-documented fact that refugees are often forced to flee their countries without valid travel papers, and that the concept of "necessity" is not defined in any of the proposals, the requirement of such a showing may place insuperable roadblocks before refugees deserving of protection.

International standards are particularly instructive on this issue. Article 31 of the 1951 Convention provides:

1. The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of Article 1, enter or are present in their territory without authorization and show good cause for their illegal entry or presence.

This prohibition against penalties for illegal entry applies to any refugee coming from a place of feared persecution who can show "good cause" for his or her manner of entry, and was included in the Convention because the drafters recognized that refugees, due to their predicament, frequently are unable to obtain the required travel documents from their countries of origin or the required entry permits from the countries where they seek refuge.

The Executive Committee of UNHCR, which is comprised of 47 representatives from various States including the United States, provides further policy guidance on the question of the use of false documents by refugees. Consistent with Article 31 of the Convention, the Executive Committee "recognized that circumstances may compel a refugee or asylum-seeker to have recourse to fraudulent documentation when leaving a country in which his [or her] physical safety or freedom are endan-

<sup>16</sup> According to the UNHCR, the largest concentration of refugees, about six million, is found in the area of southwest Asia, north Africa and the Middle East. This includes more than five million Afghans in Pakistan and Iran, the largest single displacement of a national group. These refugees await stability and an end to renewed conflict in Afghanistan.

<sup>17</sup> Africa continues to have the largest number of people forced to flee their homes, including six million refugees and more than 13 million internally displaced persons (those who have not crossed an international border). A substantial number of those displacements are in the Horn of Africa and in countries bordering Liberia.

<sup>18</sup> 8 U.S.C. § 1157 (1988).

gered" and has discouraged States from punishing persons in such compelling circumstances.<sup>19</sup> The "good cause" standard set forth in Article 31 would appear to be more flexible and generous than the proposed requirement of a showing that the use of false documents was "necessary" for departure. We suggest that any proposed penalties applicable to asylum seekers conform to the clear intent of Article 31. If an asylum seeker can show "good cause" for failure to present valid travel documents on arrival in the United States, he or she should be granted access to the normal asylum adjudication procedure. Under no circumstances should a refugee's failure to produce valid travel documents relieve a State from its non-refoulement responsibilities under Article 33 of the Convention.

Other proposals under discussion would impose or increase civil and criminal penalties on aliens who use false documents or fail to present proper documents upon arrival in the United States. Penalties for the use of false documents already exist in U.S. immigration laws and are, in some cases, used to prosecute and convict individuals who were victims of severe persecution and have later been found to be refugees. In such cases, the United States is in violation of its duties as a signatory to the Convention. In order to prevent further breaches of international obligations, penalties for document fraud should exempt those individuals who merely obtain, use or possess fraudulent documents.

#### *B. Expedited exclusion*

A number of proposals under discussion would bar from entry into the United States any alien who uses fraudulent documents or who fails to present upon arrival travel documents used to board a common carrier, including a person seeking asylum for persecution. Some would invoke such procedures only in cases of "immigration emergency" where a mass influx threatens to overwhelm the current capacity of the adjudication system. While these proposals generally would not bar those who could show a "credible fear of persecution or of return to persecution," the procedures by which this determination would be made are summary in character. There is no provision for an evidentiary hearing or an administrative appeal, and only extremely limited judicial review.

Substantial changes would be needed to render such proposals compatible with international and constitutional standards. Following is an outline of modifications which would ensure that proposals for expedited exclusion satisfy U.S. international and domestic procedural obligations.

1. Any system for expedited exclusion of asylum seekers should concern only "manifestly unfounded or abusive applications for asylum" in accordance with international standards.<sup>20</sup> This formulation would require only that some evidence be presented to substantiate the claim for refuge. Limitation of expedited exclusion in this way would ensure that the system is more directly related to the actual issue of concern, *i.e.*, fraudulent claims, than the possession of valid travel documents and/or the manner of entry.

2. Any person who indicates a fear of return should receive a written description of the criteria and procedures for applying for asylum and withholding in the United States.

3. Any person who wishes to apply for asylum or withholding should be provided access to legal counsel and the UNHCR, if so desired. A list of available free legal services should be provided to applicants as early as possible in the process, and an opportunity should be accorded to contact counsel.

4. The adjudicators in such a system should be specially trained Asylum Officers.<sup>21</sup> This would be best accomplished by incorporating in statute the current Asylum Corps of the Immigration and Naturalization Service.<sup>22</sup> Given the grave nature of the interest at stake, adjudicators under a summary exclusion procedure should be Senior Asylum Officers who are attorneys, and who have served for at least two years as Asylum Officers.

5. A uniform questionnaire should be utilized, to be completed by the applicant and used as the basis for the oral interview, at which the individual should be given the opportunity to present any pertinent witnesses or evidence. The interview should be conducted in such a manner as to provide an asylum seeker an opportunity to fully present his or her claim.

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<sup>19</sup> UNHCR Executive Committee Conclusion No. 58 (1989).

<sup>20</sup> See UNHCR Executive Committee Conclusion No. 30, para. (d) ("The Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum") (1983).

<sup>21</sup> *Id.* at para. (e)(ii).

<sup>22</sup> The Asylum Corps was established by rulemaking in 1990 as an office of professional adjudicators separate from enforcement activities of the immigration agency.

6. A decision denying asylum should be in writing and should set forth reasons in sufficient detail so as to render an appeal meaningful. A denial should not be based solely on the alleged insufficiency of the evidence presented where the only pertinent evidence is the uncorroborated testimony of the applicant.

7. A Senior Asylum Officer should be empowered to grant asylum and withholding in manifestly well-founded cases, and to order release from detention pending adjudication in the normal asylum procedure for individuals who present substantial claims for protection.

8. An applicant should have the right to appeal by requesting review and should have an opportunity to submit a statement on appeal.<sup>23</sup>

9. Competent and adequate interpretation and translation should be provided to the applicant at every point concerning the submission of his or her case.

10. Appeals should be decided promptly by an Asylum Appeals Officer attached to the Executive Office for Immigration Review. Expedited notice and an opportunity to object to the use of the summary exclusion procedure should be given by the Asylum Appeals Officer to the Department of State.

11. There should be no limits on the opportunity to seek judicial review of an adverse agency decision. Extraordinary limits on habeas corpus relief such as those proposed may be unconstitutional as a suspension of the Great Writ (Article I, Section 9).

12. Individuals subject to expedited exclusion procedures should be permitted to remain in the United States pending a final determination of their status. Individuals who present manifestly unfounded claims for asylum or withholding would be subject to exclusion and immediate deportation under the Immigration and Nationality Act.

13. Individuals subject to expedited exclusion procedures who are detained should be subject to the release authority which permits early parole for those applicants with substantial claims. Currently, INS's Asylum Pre-Screening Officer (APSO) program provides for the release of detained asylum applicants who demonstrate a "credible fear" of persecution.

14. Individuals excluded under summary procedures should not be removed without an advance assurance of acceptance in the place of contemplated return. Advanced assurance of acceptance would avoid the phenomenon of "refugees in orbit" (the shuttling of asylum seekers from airport to airport) and possible return to a place of persecution.<sup>24</sup> This arrangement could be made on a case-by-case basis as is done in the general deportation procedure<sup>25</sup> or through bilateral or multilateral agreements such as the Dublin Convention in Europe.

#### C. Limits on refugee admissions

At least one proposal would retract from the President the discretion to determine, in consultation with Congress, the number of refugees to be admitted in each fiscal year, limiting admissions to no more than 50,000 absent specific congressional authorization. This proposal clearly is not linked to a decline in the worldwide refugee population; the number of refugees is on the rise. If the impetus for such a limitation is the belief that those admitted under the current system are not the most deserving of protection, we suggest that, rather than limiting the total number of admissions, the United States would better serve its interests by reforming the overseas refugee processing procedure. The Lawyers Committee has submitted a Petition for Proposed Rulemaking to the Departments of State and Justice which includes suggestions for reforming the overseas refugee selection procedure designed to ensure that those most deserving of protection are identified and selected for resettlement to the United States.

Moreover, the United States has a strong interest in promoting burden-sharing among refugee-receiving States. In light of its long tradition as a haven for victims of persecution, reducing refugee admissions to a fixed limit—at less than half the number admitted in recent years—sends the wrong message to other countries, many of which have fewer resources and are host to much larger numbers of refugees than the United States.

Senator SIMPSON. Thank you very much.  
Now, Gregory Nojeim, please. Mr. Nojeim.

<sup>23</sup> Id. at para. (e)(iii).

<sup>24</sup> See Amanullah and Wahidullah v. Cobb, 862 F.2d 362 (1st Cir. 1988).

<sup>25</sup> See 8 U.S.C. § 1253 (1991).

**STATEMENT OF GREGORY T. NOJEIM**

Mr. NOJEIM. Thank you, Mr. Chairman. Mr. Chairman and members of the committee, I appreciate the opportunity to testify before you today on behalf of the ACLU, a nonpartisan organization devoted to protecting the Bill of Rights. I will focus my remarks today on proposals to control illegal immigration by creating a nationwide system of identification of every person in the United States.

The ACLU has vigorously opposed the creation of a national I.D. card, whether the card is embodied in plastic or whether the card is intangible, sort of a virtual reality card consisting of a computerized data base containing information about every person in the country. A national I.D. card or system of identification, though proposed as a measure to control illegal immigration, would substantially infringe upon the privacy rights of all persons in the United States, including its citizens.

Over the past few decades, proposals for a national I.D. card have appeared a tempting, but ultimately ineffective quick fix to a pressing national problem. Most recently, a national system of identification was recommended by the Commission on Immigration Reform, endorsed in the Immigrant Control and Financial Responsibility Act of 1995, and embraced in part by the Clinton administration. The plan features the creation by the Government of a computerized file on every person in the United States, through which employers could use Social Security numbers to verify whether the person represented by a particular Social Security number is authorized to work.

The ACLU believes that a national I.D. system will inevitably violate the most basic of American liberties, the right to be left alone. We are a free people who cherish our right to be individuals, to be left alone, to start over, free from the prying eyes and the grasping hands of both big-brother bureaucrats and snooping commercial interests.

Using the Social Security number as a national identifier would subject people to privacy intrusions, such as Government surveillance and increased data collection and sharing. Government-collected information has frequently been used for purposes other than that for which it was originally gathered.

For example, confidential Census Bureau information was used during World War II to help the War Department forcibly confine Japanese-Americans to internment camps. This was an episode so shameful in our history that Congress recently saw fit to apologize to Japanese-Americans and offer compensation. During the Vietnam war, the FBI secretly used its computerized National Crime Information Center to monitor the activities of people opposed to United States involvement in the war.

Moreover, the Government has facilitated private sector abuse of data tied to the Social Security number. It was discovered 6 years ago that the Social Security Administration had disclosed millions of Social Security numbers en masse to the private sector, until public outcry halted that practice.

The proposed national identification system is also prone to abuse because it will be impossible to control access to data and use of it once the data is accessed. Discrimination is one of our greatest fears. Nothing will stop an employer who is also a landlord

or a creditor from denying a lease to a potential tenant or credit to a borrower because the employer learned the applicant is authorized to work in the United States for only a limited period, even if that authorization was of a type likely to be routinely renewed.

Other problems concerns us as well. Data in the system would inevitably be unprotected from computer hackers. Faulty Government recordkeeping and counterfeit breeder documents would render the system unworkable and extremely expensive to establish and maintain. Finally, the system would inevitably lead to a national I.D. card because employers, under any of the proposals, will always need to verify that the person who is standing in front of them is indeed the person authorized to use the Social Security number.

Mr. Chairman, to your credit, this and other legislation you have proposed has explicitly rejected the creation of a national I.D. card. We commend you and the Commission on Immigration Reform for taking such a principled position and we hope it will not change. However, we believe the proposed national identification system can itself function just like a national I.D. card and will, in fact, lead to an actual national I.D. card, even if the card goes by some other name.

Bigger Government and establishing a new, large Federal bureaucracy, the sole function of which is to create a file with information about every person in the country, is not the answer to the problem of undocumented workers. Alternatives to this big-brother approach, such as more stringent enforcement of wage and hour laws to reduce the competitive advantage of hiring the undocumented at substandard wages in unsafe working conditions, should be considered.

At some point, the balance between the Government's need for information and the privacy needs of the people must tilt in favor of the people. We believe we have reached that point.

Thank you very much. I will be happy to entertain any questions.  
[The prepared statement of Mr. Nojeim follows:]

#### PREPARED STATEMENT OF GREGORY T. NOJEIM

Mr. Chairman and Members of the Subcommittee: I appreciate the opportunity to testify before you today on behalf of the American Civil Liberties Union (ACLU). The ACLU is a nationwide, non-partisan organization of more than 275,000 members devoted to protecting the principles of freedom set forth in the Bill of Rights. This hearing was called to explore proposals to reduce illegal immigration. I will focus on proposal to control immigration by creating and testing a nationwide system of identification of every person in the United States.

#### A NATIONAL SYSTEM OF IDENTIFICATION

The ACLU has vigorously opposed the creation of a national ID card, whether the card is embodied in plastic, or whether the "card" is intangible—sort of a "virtual reality" card consisting instead of a computerized data base containing information about every person in the United States. A national ID card or system of identification, though proposed as a measure to control illegal immigration, would substantially infringe upon the privacy rights of all persons in the United States, including citizens.

Over the past few decades, proposals for a national identification card have appeared a tempting (but ultimately ineffective) "quick fix" to a pressing national problem of keeping track of one segment of the population or another. Most recently, a national system of identification has been proposed as a way to prevent undocumented aliens in the United States from working.

The ACLU has repeatedly called to the attention of Congress various problems with the employer sanctions provisions of the Immigration Reform and Control Act of 1986 (IRCA). We have pointed out that employer sanctions could lead to a national identification card/internal passport system. Today, Congress conducts hearings on legislation that would test a national ID system.

The ACLU believes this to be another unfortunate proposal that would inevitably lead to a national ID card, or to a number of such cards issued by the states but all tied together by common reference to one identifying number, the Social Security Number (SSN).

#### THE PROPOSED WORKER VERIFICATION SYSTEM

In August of last year, the Commission on Immigration Reform, chaired by Ms. Barbara Jordan ("the Jordan Commission") proposed that the Social Security Administration (SSA) and the Immigration and Naturalization Service (INS) work together to create a data base tracking every person in the country. The data base, accessible by each of the 5.5 million employers in the U.S. would tie the SSN of every person in the country to information indicating whether the person represented by a particular SSN is authorized to work because the person is either a citizen, or an alien with work authorization. Employers would demand of employees their social security numbers, run the numbers through the data base, and determine whether the employee was authorized to work.

The Jordan Commission proposed that the national identification system be tested through pilot programs in the five states with the highest levels of illegal immigration, and in several other states. The Clinton Administration endorsed the Jordan Commission's general proposal that worker verification schemes be tested, but the parameters of proposed testing envisioned by the Administration are not precisely clear.

The Immigrant Control and Financial Responsibility Act of 1995 (S. 269) in many respects mirrors the Jordan Commission's proposal that a national identification system be tested in five states with various demonstration projects, with a nationwide project following thereafter.

#### FLAWS IN THE PLANS TO CREATE A NATIONAL IDENTIFICATION SYSTEM

The ACLU believes that a national ID system will inevitably violate the most basic of American liberties: the right to be left alone. Unlike children and workers in Nazi Germany, Soviet Russia, apartheid South Africa, Castro's Cuba or Saddam's Iraq, no American need fear the jackbooted demand "Identity papers!" We are a free people who cherish our right to be individuals, to be left alone, and to start over, free from the prying eyes (and grasping hands) of both Big Brother bureaucrats and snooping commercial interests.

Plans for a national system of identification share a number of similar fundamental flaws. They are prone to abuse of privacy rights. Moreover, no data base is secure. Additionally, the proposed plans are unworkable, expensive, and likely to lead to a national identification card.

Some believe that the way to deal with the problem of undocumented aliens who work is to establish a new, large, federal bureaucracy the sole function of which is to create a file with information about every person in the country.

The ACLU believes that bigger government is not the answer to the problem of undocumented workers.

##### *i. Potential for abuse*

Most importantly, using the SSN as a national identifier would subject people to privacy intrusions, such as government surveillance and increased data collection and sharing.

Twenty years ago, a Democratic Congress enacted, and a Republican President signed into law, the Privacy Act of 1974. Congress feared that if the "use of the SSN as an identifier continues to expand, the incentives to link record and broaden access are likely to increase."

The Senate Committee report described the growing use of the SSN as "one of the most serious manifestations of privacy concerns in the nation," including the risk that "the number may become a means of violating civil liberties by easing the way for indexing or locating the person." Senator Barry Goldwater (R-AZ) spoke on the Senate floor in vehement opposition to the increasing use of the SSN, calling on his colleagues "to stop this drift toward reducing each person to a number."

There are clear examples of how government-collected information has been used for a purpose other than that for which it was initially intended. For instance, the confidentiality of Census Bureau information was violated during World War II

to help the War Department locate Japanese-Americans so they could be forcibly moved to internment camps. During the Vietnam War, the FBI secretly operated the "Stop Index" by using its computerized National Crime Information Center (NCIC) to track and monitor the activities of people opposed to the United States' involvement in the war.

Moreover, the government has facilitated private sector abuse of data tied to the SSN. It was discovered six years ago that the Social Security Administration used to disclose SSNs to the private sector until public outcry halted the activity. Following the public disclosures, the SSA Commissioner announced in April, 1989 that the SSA had decided not to process magnetic tapes containing 140 million names and SSNs submitted by TRW Credit Data, a credit reporting company. The Senate conducted hearings and learned that the SSA had conducted three million SSN verifications for Citibank and other firms in past years.

The private sector's use of the SSN to access information about individuals has evolved to a point never envisioned by its creators. For example, in a 1990 advertising brochure, TRW Credit Data, which holds itself out as the nation's largest provider of consumer credit information and claims to maintain information on nearly 170 million consumers nationwide, advertised a service called Social Search:

In pursuit of those who have disappeared—former customers, college alumni or missing shareholders—TRW brings you Social Search: A state-of-the-art locating tool that puts our expansive data bases to work for you \* \* \* All you need are the social security numbers of those you're attempting to locate and can reach those hard-to-find individuals who may have moved or changed their names.

This history shows the enormity of the temptation to expand a data system, like the SSN, far beyond its originally intended purpose. Expansion of the data system would allow the tracking of persons in the U.S. from cradle to grave in the most intimate details—from purchasing patterns to credit needs, to new uses not yet conceived. But having succumbed to his temptation in the past is no reason to do so again. This is especially true when the SSN will simply not serve the purpose of being a reliable personal identifier.

The proposed national identification system is also prone to abuse because it will be impossible to control access to the data. There are 5.5 million employers in the United States. The system requires that each of these employers have access to the data base tying workers to immigration status.

The ACLU is particularly concerned that persons posing as employers would access data on persons who have approached the "employer" for reasons of other than employment. Differential treatment of people based on the contents of the data base is a real possibility, and one of our greatest fears.

For example, an "employer" who is a landlord would have every incentive to determine whether a potential tenant is authorized to work in the United States. Landlords could deny leases to aliens whose work authorization was soon to expire.<sup>1</sup> An "employer" who is a seller on credit would have every incentive to determine whether a customer/debtor was authorized to work to pay off the debt. They, and many others, would have every incentive to access the data base, as they would be entitled to do, as an "employer."

None of the proposals suggest that no access can be given, except by the employee, to a particular employer, for a particular period of time. None of the proposals suggest that a person be notified each time information about them is accessed, and they should. In fact, people should be provided with the name of any "employer" who accesses data about them, and should be provided a copy of the data. These are necessary safeguards.

Statutory protection of privacy rights, as set forth in the proposed legislation as being in accordance with industry standards, is simply not sufficient. "Industry standards" include the routine sale of identifying information about individuals, their purchasing patterns, and other personal characteristics.

Statutory protection of privacy as set forth in the proposed legislation (S. 269) is also insufficient because it can be statutorily taken away. Ironically, in the very same legislation Congress would promise privacy protections and limited use of this data, it would also breach the privacy protections of amnesty and Special Agricultural Workers (SAW) immigration programs. The legislation would repeal the very privacy protections—the statutory promise that data would not be used for purposes other than the amnesty and SAW programs—that encouraged aliens to come forward and register.

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<sup>1</sup> Landlords may also be unaware that many aliens with a soon-to-expire work authorization are often entitled to have their work authorization renewed for additional periods.

In addition, in this same legislation, yet another use (in addition to verifying work authorization) for the data base is proposed: verification of eligibility for public benefits.

We have no reason to believe government use of this data will stop there. In fact, in Section 517(b) of H.R. 1157, the March 8, 1995 version of the House welfare reform bill, members of Congress suggest that the states be required to use SSNs for marriage licenses as well as occupational licenses for attorneys, doctors, and other professionals.

The government's thirst for personal data tied to the SSN cannot be quenched. "Trust us with your personal information. We're the government," is not a theme that resonates well with the American people.

#### *ii. Insecure Data*

Little needs to be said about how insecure even the most protected systems of data have become. Computer hackers have achieved access to sensitive defense files. Moreover, the proposed verification system will necessarily give hundreds, if not thousands, of workers access to the data base. Congress knows already that some unscrupulous law enforcement officials and employees of state departments of motor vehicles already sell DMV information (including drivers license information that often contains name, address, and SSN) for as little as \$20-\$50 per inquiry. Congress recognized this problem in its last session when it enacted the Driver's Privacy Protection Act of 1994 as Title XXX of the Violent Crime Control and Law Enforcement Act of 1994.

However, these experiences alone should give pause when plans are made to establish a large, unprecedented computer data base with a file about every person in the country.

#### *iii. Unworkable system*

The worker verification system is unworkable because the underlying data and documents are unreliable. The Social security Number (SSN) was never intended to be relied upon as foolproof identification. Historically, SSNs have been easy to obtain because there was no need for a secure card for purposes of administering the Social security program. Many duplicate and inaccurate social security numbers are in use. All numbers would have to be reissued if the system were to be effective at all.

In her March 3, 1995 testimony before the House Subcommittee on Immigration and Claims, Dr. Shirley S. Chater, the Commissioner of Social Security, noted the extreme difficulty, if not impossibility, of using the Social Security card, and by implication the SSN, as a personal identifier. Commissioner Chater testified:

It [the SSN] was never intended to serve as a personal identifier—that is, to establish that the person presenting it is actually the person whose name and Social Security number appear on the card. Although we have made it counterfeit-resistant, it does not contain information that allows it to be used to establish identity.<sup>2</sup>

Commissioner Chater reported that improved versions of the Social Security card are only issued to new applicants—because of the cost. Consequently, "There are now 46 valid versions of the Social Security card \* \* \* and employers have no reason not to accept them."<sup>3</sup>

In addition, there is the problem that all cards issued prior to 1971 were issued solely on information furnished by the applicant—with no attempt at verification of any of the information. Not until 1978, were all applicants required to present documentary evidence (such as it was) of age, identity, and U.S. citizenship or alien status.

The Commissioner of Social Security was no more optimistic about the use of the SSN, as distinct from the card, for purposes of employment eligibility verification. She noted that the Social Security Administration conducted a 1987-88 study of a telephone verification system for employers in three Texas cities. According to Ms. Chater:

The test results indicated that although technically feasible, the effectiveness of an SSN verification system in helping employers prevent aliens not authorized to work in this country would be limited, because there is no

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<sup>2</sup>Chater, Statement on Worksite Enforcement of Employer Sanctions Before the House Committee on the Judiciary, Subcommittee on Immigration and Claim, 104th Cong., 1st Sess. 1 (March 3, 1995).

<sup>3</sup>Chater at 8.

way to be sure that the job applicant presenting a valid Social Security card is the person to whom it was issued.<sup>4</sup>

But the problems in the Social Security Data base are minuscule compared to the gross inaccuracies in the INS data bases with which they are to be made compatible.

Put aside extraordinarily shoddy file maintenance, and the recent admission by an INS official that sixty thousand (60,000) applications for asylum had been "lost out in space" and not entered into the INS computer that is supposed to identify every asylum applicant.

Put aside the fact that when INS does input information, it often does so incorrectly. As a result, the INS computer cannot locate information even when it exists. In 1991, the ACLU Immigrants Rights Project obtained copies of computer disks the INS had created to track 50,000 individuals covered by the settlement of a lawsuit. A computer expert reviewing the INS disks said that the data were virtually useless because INS had routinely entered first and last names in the wrong order, making a name search impossible, had inconsistently entered the critical alien number assigned to each alien without the "A" or with another letter, making the search by A-number impossible, had repeatedly entered data into the wrong data field, and misspelled key pieces of data.

In recent testing of the INS Telephone Verification System (TVS) pilot project, a full 28% of the alien employees tested in the pilot had to be sent back to INS for what the INS termed "secondary verification"—in fact, a time consuming, check by hand through INS paper files about the aliens who the INS could not verify the first time were eligible to work. After these time-consuming checks, over half of those flagged by INS as potentially ineligible to work were found in fact to be eligible to work.

Moreover, employers who want to abuse any national identification system based on the SSN will still be able to do so. They will simply refrain from reporting SSNs for suspected undocumented alien employees, and hide unemployment records of these employees. To evade attempts to identify them, these employers can be expected to report SSNs occasionally. That would create a market for SSNs, which could then be bought and sold by unscrupulous employers. Any identifying code or information, such as a PIN number or a mother's maiden name, would cost extra. Sellers of their own SSN's would include the self-employed and the unemployed; sellers of third party SSN's would include unscrupulous employers, creditors, sellers of goods who require a driver's license SSN on a personal check for purposes of identification, and a whole host of others. After great expense, the government might find a way to cope with this problem, but new evasive schemes would be devised.

Furthermore, even extremely sophisticated technology cannot overcome the central problem that makes current identification cards unreliable—the ease of obtaining fraudulent underlying documents ("breeder documents") such as birth certificates and driver's licenses. These breeder documents are used to obtain other identification documents.

The proposed plans cannot cope with the problem of breeder documents because these documents are largely produced by the states and are susceptible to counterfeiting. To require the states to adopt measures to issue more secure breeder documents would unfairly burden the states, or create an additional draw on the federal treasury.

To their credit, the proposed plans include some start up time to deal with the problems of incompatible, out-of-date, and simply inaccurate data. But no amount of time or money will guarantee that the data bases are completely accurate.

Moreover, none of the plans outline any performance criteria. What level of inaccuracy in the national identification system would be acceptable?<sup>5</sup> Five per cent? Two per cent? Even a one per cent level of inaccuracy would mean that over one million U.S. workers would be required to go through some sort of secondary evaluation, and do battle with what promises to be a nightmare bureaucracy, just to prove they are eligible to work. They would lose valuable work time, and their employers would lose their valuable services.

Equally worrisome, part of the burden of battling the bureaucracy around this program would fall on employers. Those work-authorized employees most likely to require secondary verification would be immigrants. Employers would then have an

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<sup>4</sup> Chater at 9.

<sup>5</sup> The data in the national identification system would be a moving target, requiring constant updating, because people are always being born, or passing away, or newly immigrating to the United States, or are newly granted the right to work. Cleaning up the data base once will not suffice.

incentive to discriminate against "foreign looking" job applicants, and those who have an accent.

*iv. Expense*

The Jordan Commission estimated that the cost of implementing the plan from the point of view of the SSA would be \$126 million initially, and another \$62 million/year. If these inadequacies in using the SSN and card for employment verification were to lead to a new card for everyone (as some have already suggested), the SSA estimates that the cost of verifying identities and issuing everyone a new, more secure card would be \$3 to \$6 billion, depending on the security features and issuance procedures. This would not include the potential cost to employers. Nor does it calculate the cost to individuals, as each person in the United States would have to establish their identity and citizenship or lawful alien status before being issued the new card.

The Jordan Commission provided no estimate whatsoever of the cost of improving INS record keeping to the point where the records could be useful for the data base. Neither did the INS. Given the sorry state of INS record keeping now, one can only guess. However, it is clear that even after INS costs are figured in, societal costs, in terms of lost work hours trying to straighten out the inevitable problems in the data base will drive this figure much higher.

One must ask whether the costs will exceed the anticipated benefits of this new government program.

*v. National identification card*

While the ACLU believes that the creation and maintenance of a data base with information about every American is itself a system of identification prone to abuse and invasive of privacy, we also firmly believe that the system will lead to a national identification card.

Employers will always need to find a way to verify that the person who is standing in front of them and purports to be represented by a particular SSN is indeed the person who is authorized to use that SSN. This will require some kind of identification means, and a card is the most likely means.

The Jordan Commission has proposed that a Personal Identification Number ("PIN") or another piece of secret data be used. But these secret data tend not to be secret for long. The GAO noted in a report prepared in March 1988, and cited by Social Security Commissioner Shirley S. Chater in her recent testimony before the House Subcommittee on Immigration and Claims, that law enforcement authorities have found that PIN numbers are often written down, and are sometimes stolen.

Indeed, at the same hearings, Secret Service Special Agent Robert Rasor advised the House Subcommittee on Immigration and Claims that any electronic data base system would have a basic weakness in verification of the identity of the person purporting to be represented by the SSN. He advised the House Subcommittee that the only way to make a sure identification was to use a card with what he termed a "biometric identifier" such as a fingerprint.

#### PROPOSED TESTING OF THE NATIONAL IDENTIFICATION SYSTEM

For the reasons identified above, the proposed national identification system should not be pursued. Make no mistake: ACLU opposes a national identification system, and any plans to test such a system. Nonetheless, we understand that national identification systems may be given limited tests. These tests will result in abuse of the right of privacy. To minimize abuses, any test of a national identification system should include the following, at a minimum:

(i) performance standards and benchmarks so that should it become clear the system cannot succeed, it can be abandoned;

(ii) due to problems in the INS and SSA data bases identified above, any test should be a true test, which INS and SSA use to clean up their data bases, instead of a tool for enforcement of employer sanctions. During the testing phase, no data should flow back to the employer. Until the data in the system has reached the acceptable level of accuracy, no person should be a human guinea pig denied a work opportunity through the testing phase, and thereby be made to pay a personal price for inaccurate governmental data systems;

(iii) an explicit, statutory bar that makes it illegal to use the data base for purposes other than employment verification in the specified manner;

(iv) civil penalties, including liquidated and compensatory damages, as well as attorneys fees, for misuse of the collected data by any person whether they are an official of any local, state, or the federal government, or whether a private individual or corporation;

(v) immediate, automatic notification to any person about whom the data base is queried of the name, address, and phone number of the querying party, with the opportunity to contest unauthorized transmission of the information before it occurs;

(vi) immediate, automatic written notice to the person, who was the subject of the verification, specifying the exact information that was released; and

(vii) third-party monitoring of the verification system through an independent audit, and third-party data collection about those employees who are victimized by the system.

#### CONCLUSION

There are alternatives to the Big Brother approach Congress considers here. One would be to eliminate employer sanctions altogether, which as we said, have lead to denial of civil rights and civil liberties, without reducing illegal immigration. Another alternative would be more stringent enforcement of wage and hour labor laws. Unscrupulous employers gain a business advantage by employing exploitable workers at substandard wages in unsafe working conditions. More stringent enforcement would reduce the economic incentive employers have to hire undocumented workers, who by virtue of their status, fear to report substandard wages and working conditions.

The proposed national identification system is invasive of privacy, prone to abuse, insecure, unworkable, expensive, and likely to lead to a national identification card. We believe that this Big Brother proposal should be stopped now so that further damage to the cause of privacy, and liberty, is contained.

I will be happy to entertain any questions you might have.

Senator SIMPSON. Thank you very much, Mr. Nojeim. David Simcox, please. It is nice to see you again, sir.

#### STATEMENT OF DAVID SIMCOX

Mr. SIMCOX. Thank you, Mr. Chairman, for giving me this opportunity today to present a view on immigration control that is a little different. It is based on our concern for this country's high current and projected population growth and the serious resource depletion and environmental degradation that portends for future generations of America.

We certainly welcome S. 269 as an important and needed policy shift. Indeed, it almost approaches being a paradigm shift. We cannot take issue, in principle, with any of its provisions, though there are some excellent ideas that could be more ample in their reach.

For example, the provisions for increasing Border Patrol strength 250 yearly will fall short of the goal already announced by the administration to have a 7,000-member Border Patrol by late 1996. We believe that ultimately this country must have a Border Patrol no smaller than 8,000 persons if it is to seriously reduce surreptitious entry to a negligible level.

We are as concerned as anyone about the lack of progress toward effective I.D. systems since the idea first appeared in legislation in 1986. What happened? A great deal has been learned in that time about the options, about data bases, the needs of employers, and illegal alien employment patterns. We would urge you to reduce the 8-year grace period your bill now offers to the administration for institution of a system to no more than 5.

The bill also seems to exclude relevant data bases of other agencies from use in building a central verification index. The bill should be written to allow the use of State Department passport files and Veterans Administration, Selective Service, military files, and possibly others.

Our concern for surreptitious entry across our land borders must not overshadow the serious problem of visa overstayers, which now account for at least half of all illegal immigrants. We believe the needed verification system should be designed to detect the presence in the country of aliens who are out of status as nonimmigrants, in addition to the duties you assign it to verify work eligibility and to screen for public assistance eligibility.

A slack and permissive political asylum system has grown into a major avenue of illegal immigration and a major magnet for it. I see this bill as a major step to making the system more rational and more prompt in its decisionmaking. Consistent prompt deportation or exclusion after denial of claims, something that is seriously lacking now, is essential to send the message abroad that the asylum system will not be gamed.

The proposal to make affidavits of support into enforceable contracts certainly addresses a serious problem, but the unenthusiastic application of the existing deeming provisions of the law and the wide variation of the States' application of those provisions and the shortage of Government legal and enforcement personnel suggest poor prospects of vigorous enforcement.

I appreciate any political concerns about a blanket legislative ban on assistance to legal aliens, so I suggest two things that might save money or promote efficiency if coupled to this bill's proposals. The first would be a requirement that every legal immigrant to the United States arrive with prepaid medical insurance for a period of no less than 3 years. The other would be to contract out to the private sector, on contingency, if necessary, more of the task of recovering public assistance improperly paid to legal and illegal immigrants.

There is, in my judgment, a great deal of opportunity for privatizing in this manner a number of INS functions involving recovery of assistance, bond forfeitures, recordkeeping, and monitoring of specialized nonimmigrant populations. I discuss this more in my prepared testimony.

Finally, we consider the bill's provisions on parole authority and refugees an important step toward eliminating the off-budget habit that has plagued our immigration accounting for decades. We continue to favor a single, all-inclusive ceiling for all immigration and refugee admissions, one that would be at considerably lower levels than at present.

We support repeal of the Cuban Adjustment Act. There is tremendous pent-up demand for immigration within Cuba that will spill over into the United States once the travel restrictions and the controls of the Castro regime end. The existence then of an automatic track to permanent residence for Cubans will greatly complicate management of what may alone become an immigration emergency.

For us, finally, an important principle is that the cost of running the immigration system should be borne, to the extent possible, by its users and its beneficiaries. The border-crossing fee you have in your legislation is a reasonable expression of that principle.

Thank you.

[The prepared statement of Mr. Simcox follows:]

## PREPARED STATEMENT OF DAVID SIMCOX

I am David Simcox, Senior Advisor of the Board of Negative Population Growth, Inc. NPG is a public interest, environmental group that advocates early attainment of population stability in the United States through democratic non-coercive means, leading to a gradual reduction of the U.S. population to a level that is environmentally sustainable for the long haul. NPG now regards immigration as the major accelerant of population growth and considers its sharp reduction essential to an environmentally-responsible population policy.

Thirty years of U.S. government neglect of our borders and ports of entry have created a disruptive and ominous situation. The permanent pool of illegal aliens, now between 4.0 and 5.0 million, grows by 300,000 to 350,000 yearly<sup>1</sup> and constitutes at least a quarter of our annual immigration of about 1.2 million. Since 1960, illegal immigration has added more than 10 to 11 million to the U.S. population, including roughly 2.0 million U.S.-born children of illegals.<sup>2</sup> According to INS, more than half don't enter now by sneaking across the border, but by using visas and other temporary travel documents to enter legally and then overstay.<sup>3</sup> The present situation portends steady growth of illegal immigration in the coming decades, as the pool of candidates for illegal entry swells as a function of the 50 million person annual increase of the largely underemployed labor force of the third world.

## FIGHTING ILLEGAL IMMIGRATION ON THREE FRONTS

Enforcing the laws effectively, against the opposition of entrenched interest groups, will require firm political will and a range of responses to illegal immigration that are more precise than the blunt frontal attack of 1950s-style mass roundups.

Tough enforcement at the border, inland and at ports of entry is necessary, but not sufficient. Washington must strengthen and expand external and internal enforcement with increased authority and resources, more and tougher penalties, new deterrents, and overall better management. But while doing so, the federal government must act to rid the asylum system of its built-in incentives to illegal entry.

All levels of government must look more carefully at the market incentives for illegal immigration: the implicit subsidies to privileged groups, the profit opportunities for business with the socialization of the costs, and the inviting prospect of low risks and high returns now perceived by candidates for illegal entry. Critical to dampening these market incentives is the shifting of the costs of immigration to the immigrants themselves and to their employers and sponsors, and away from the taxpayers.

NPG offers here more detailed specific proposals for action on these three fronts:

- more efficient enforcement and deterrence;
- shifting the costs of illegal immigration to its beneficiaries; and
- turning off the magnet of the asylum system.

**Combating Push Factors: Not a Timely Option.**—In calling for action, NPG does not concern itself with the "push factors" of illegal immigration. It accepts economic stagnation and rapid population growth in the third world as a given for at least another generation. It proposes no trade and aid schemes to improve conditions in sending countries of illegal aliens, though such programs are, in many cases, worth doing for sound economic and humanitarian reasons of their own—but reasons having only a very long-term effect on immigration trends, if any.

Often such proposals put forward a vague program of international altruism that obscures the tough choices facing the country. Their seductive danger is that they are often advanced by those who prefer inaction as an alternative to practical measures available now to the United States to curb illegal immigration. It is absurd to argue that the United States must literally rebuild the third world before managing its own borders.

The economic collapse of Mexico in late 1994, in spite of profuse injections of foreign capital and unparalleled access to the U.S. market under NAFTA, illustrates how meandering and hazardous is the path to prosperity for developing nations. But

<sup>1</sup> Robert Warren (1994). "Estimates of the Unauthorized Immigrant Population Residing in the United States, by Country of Origin and State of Residence: October 1992," Washington: Immigration and Naturalization Service.

David Simcox (1994). "INS Estimates 4.0 Million Illegals Present in 1994: Estimate Seen as Low," Immigration Review, No. 18, Summer 1994, Washington: Center for Immigration Studies.

<sup>2</sup> Based on an estimate of 8 million persons in the United States in 1994 whose presence is due initially to an illegal entry, and a conservatively assumed natural increase rate for this population of 1.5 percent yearly.

<sup>3</sup> Warren (1994). "Estimates \* \* \*

the reality of mass immigration, fed by world population growth, is right now. A delay of two or three decades in acting will set the United States on an inalterable demographic spiral toward the lower living standards, environmental and resource degradation, and the degradation of social and political institutions that are the fruits of overpopulation.

**Defining Illegal Immigration Away: Not an Answer.**—Since immigration's population effects are the prime concern, this analysis similarly rejects proposals that would reduce illegal immigration by redefining it into exceptional categories of entrants. Amnesties are classic redefinitions. Temporary worker programs are another case in point. They tend to become permanent, produce new family reunification demands, and further raise immigration expectations in the sending countries. And they accelerate population growth.

The United States now has a resident labor force of 128 million workers, which grows by natural increase by almost one percent a year. The nation can readily meet all its economic needs out of this immense pool and through foreign trade. Progress toward population stability, aided in large part by immigration restraint, will dampen future aggregate demand for workers and the instinct to seek growth for growth's sake.

#### TIGHTENING INTERNAL AND EXTERNAL ENFORCEMENT

INS estimated in 1994 that 52 percent of the 300,000 illegal aliens settling yearly since 1988 are visa abusers. INS notes that their count does not include those smuggled in by sea, which, according to one estimate, would add at least 20,000 more.<sup>4</sup> (The 1994 INS estimate of 300,000 has since been overtaken by more recent events: the U.S. Treasury Department estimates that Mexico's devaluation of the peso will add 460,000 more illegal entrants each year, about 40,000 of whom will settle permanently.)<sup>5</sup>

Illegal entries from outside the hemisphere are now rising faster than the INS figures suggest. China looms as a massive exporter of people to the United States. A 1993 survey of immigration lawyers dealing with Chinese clients produced an estimate of 2,000 Chinese illegal entries a month in mid-1993. Leaders of the Fujian (Chinese) ethnic community in New York estimated in early 1995 that smugglers had been bringing in about 40,000 Chinese illegals a year during the last five years, just from China's Fujian province.<sup>6</sup> The highest media estimate to appear so far of Chinese illegal immigration, citing unidentified U.S. officials, reported in July 1994 that 100,000 Chinese are now smuggled into the United States yearly.<sup>7</sup>

Concentration of Border Patrol forces at main crossing areas around El Paso, Texas and San Ysidro, California, along with better barriers and lighting, have shown promising results. But the 4,300-person Border Patrol is stretched too thin.

The Clinton Administration intends to increase the Border Patrol from about 4,300 now to 7,000 by late 1996. The Administration's proposed 1996 budget would increase the INS budget from \$2.1 to \$2.6 billion. These intentions are encouraging, but we believe that at least an 8,000-member Border Patrol is needed to reduce illegal immigration to negligible numbers.

The rise of sea-borne alien smuggling argues for more funding for the Coast Guard's law enforcement function and for the U.S. Customs Service. Increased strength in these two agencies, as well as INS, will have the added dividend of better drug interdiction. Failing this, the U.S. government must use other forces, such as military and state national guard units to help control the borders.

**Financing Better Immigration Management**—The build-up of these enforcement agencies will be expensive at a time of budget retrenchment. An important principle here is that the rising costs of immigration regulation must be borne in large part by the immigration constituencies, the legal and illegal immigrants themselves, their sponsors, employers and labor contractors.

While this principle may seem mercenary to some, INS has increasingly applied it in recent years. In 1994 43.8 percent of the agency's operating budget came from fees for immigration benefits, user fees, fines, confiscations and bond forfeitures. The amount now collected—nearly \$800 million—could readily be doubled in two or three years with more realistic fees for underpriced services, and with heftier and better-collected fines and forfeitures.

The White House proposed in February a border user fee of \$1.50 per pedestrian and \$3.00 per vehicle to raise \$400 million a year for immigration control. The im-

<sup>4</sup> Warren (1994), p. 11; Simcox (1994), "INS Estimates \* \* \*"

<sup>5</sup> "Devaluation and Mexico-to-U.S. Migration," Migration News, February 1995.

<sup>6</sup> New York Times, February 23, 1995.

<sup>7</sup> New York Times, August 23, 1993; Washington Times (Reuters), July 6, 1994.

mediate objections to the proposal among border state interests display their ambivalence about illegal immigration. NPG is pleased to see that S. 269 would create a new legislative authority for a land border user fee.

Residence in the United States is one of the world's most valuable and widely sought commodities. Yet U.S. taxpayers now subsidize those who receive this boon rather than sharing in the enormous increase in projected lifetime earnings immigrants will realize by resettling in this country. Early 1989 versions of what ultimately became the Immigration Act of 1990 proposed a 15 percent tax on employers using temporary foreign workers. Congress was on the right track then, as was INS in 1994 in proposing, unsuccessfully, a new fee of \$130 to apply for political asylum. More sharing of the individual windfalls of immigration with federal and state governments would help cover the massive hidden social costs, while dampening the hyper-demand for residence in the United States.

#### FOOL-PROOF IDENTIFICATION AND TRACKING SYSTEMS CRITICAL

The growing numbers of illegal entrants who are visa abusers demand much greater official attention to this aspect of the problem, which has tended to be overshadowed by the turmoil at the borders. What is needed is more vigorous and varied internal enforcement, which would make it highly difficult for visa abusers and border jumpers alike to settle here comfortably or profitably.

Fraud-resistant identification is vital to most new or improved methods of internal enforcement. The technological opportunities for better controls have run far ahead of the political will to use them. Ineligible aliens, rarely challenged by complacent employers, have essentially nullified employer sanctions as a deterrent with an avalanche of fraudulent work eligibility documents.

Under present arrangements, employers have little to gain—and something to lose from possible penalties for discrimination—by informing themselves about ID documents and examining them carefully. It is essential that the burden of verification be lifted from employers.

The 1986 employer sanctions law itself implied that a better worker identification system might be needed, rather than reliance on fraud-prone civil documents. The Commission on Immigration Reform has called for a telephone or modem-based system in which employers could match job applicants against a national database of eligible workers based on social security and INS information.<sup>8</sup>

President Clinton endorsed this proposal on February 7, 1995. Such a system could be implemented without creation of a new national ID card. False or duplicated social security numbers would be detected in the matching process. Some 65 million to 75 million hires occur in the U.S. economy each year, far less in number than the annual credit card transactions verified electronically each year. Ongoing monitoring of this process would pinpoint major areas and industries of non-compliance and allow INS to target its internal investigations more efficiently.

NPG welcomes the provisions of S. 269 mandating the President to institute a reliable verification system. At the same time, it recalls that similar mandates in the 1986 law to develop new systems for consideration have progressed so little. We believe that government agencies have accumulated such a considerable amount of thought and experience on the options that an earlier deadline for completion is feasible. The system should be in place in no later than five years.

INS must end the gaps and imperfections in its own existing aliens database and expand it to include all recipients of visas and border crossing cards and all illegal aliens discovered in the country. Vast technological progress in automated finger-print identification systems (AFIS) now allows high speed enrollment of masses of subjects, cataloging and storage, and prompt retrieval of prints for electronic matching. The process of recording prints is not invasive and does not involve the use of ink, which some consider objectionable.

The two databases of social security accounts, appropriately sanitized, and INS's permanent, temporary and illegal entrant alien populations would be a powerful tool for confirming work eligibility, tracking and verifying departures of temporary entrants, and monitoring illegal immigrants, particularly criminals and repeat offenders. All entries in the database would be accompanied by individual digitized fingerprints—a unique biometric identifier that would remain with the subject despite any changes of name and personal data or falsified civil documents. The INS database would be strengthened by reinstating the requirement dropped in 1981 that all aliens in the United States report their whereabouts to the Justice Department once a year.

<sup>8</sup>U.S. Commission on Immigration Reform, U.S. Immigration Policy: Restoring Credibility—A Report to Congress, Washington: GPO, 1994.

**Confiscation of Property and Denial of Licenses.**—INS is now empowered to confiscate property of illegal aliens under felony forfeiture procedures where falsified immigration documents are involved. Now rarely used, this authority has great deterrent potential if applied regularly to egregious violators. Confiscation should be extended by law to apply to illegal aliens ignoring deportation orders, alien smugglers, persons harboring illegals, and repeat violators of employer sanctions rules. S. 269 satisfactorily addresses the need for new and heavier penalties.

While diplomacy and public relations might require the exemption from AFIS recording for some abroad, it should be required for most visa applicants everywhere and for all non-official travelers in countries with high rates of overstay. Overstays would be monitored in this country by matching personal data on visa recipients not known to have left the country on time against social security rolls to detect unauthorized employment, drivers license issuances, tax and criminal records, U.S. Post Office master address files, and records of gun purchasers (illegal aliens are forbidden by federal law to buy firearms).

California and New Jersey now deny drivers licenses to illegal aliens. More states are considering following suit. States should take the lead in barring illegals from receiving professional and other occupational licenses, from entering into contracts for purchase or rental of real estate, or registering automobiles. An up-to-date and secure verification system is essential to make this screening work.

#### EFFECTIVE TRACKING BACKED UP BY PROMPT REMOVAL

Better tracking of illegal aliens would produce real change only if the government is determined to act firmly against those discovered. There are a wide range of possible sanctions and deterrents against those illegally present. Some could be based on existing authority, others would require legislation.

#### *Prompt removal from the country of aliens detected, whether by voluntary departure, deportation or exclusion*

The rules for deportation and exclusion of those who won't leave voluntarily must be streamlined, with fewer appeals permitted. The numbers of immigration judges must be further increased. The Justice Department must clear away the institutional habits that inhibit prompt deportations. Less than 50,000 aliens are now deported or excluded yearly, although more than 400,000 on deportation lists are loose in the country. An increase in deportations to at least 200,000 yearly is feasible and would rapidly reduce the resident illegal population by spurring voluntary departures and discouraging prospective new illegal entrants. The changes in deportation rules offered in S. 269 will help clear away obstacles to prompt deportation.

#### *Improving the "outer screen" overseas*

Because of the millions of applicants for visas abroad, consuls must make hundreds of instant judgements a day. And the time available for individual screening continues to decline, as the number of applicants increases and the time available to consuls does not.

Much more needs to be done to increase consular personnel and improve the speed, accuracy and volume of background data on applicants. Greater rigor in screening would ultimately reduce the workload by deterring non-bona fide applications. No less important must be the de-politicizing of the State Department's management of visa issuance and insistence on strict interpretation of the law's criteria for eligibility for temporary visas. The applicant's lack of any compelling ties to his home country explains the denial of most visas. But State Department control of the visa function overseas has tilted it toward the needs of foreign policy and public relations over immigration control.

U.S. law now permits waiver of visas for visitors from countries that have low overstay rates. Reversing this approach would be effective: suspend issuance of temporary visas altogether for countries whose overstay rates exceed a certain threshold. Visas applications from that country for essential humanitarian, business and professional purposes could be processed in Washington, with inputs required from the petitioning or sponsoring parties here.

State and INS must cooperate closely in developing a secure system for tracking visitors to the United States from the point they receive the visa abroad. Individual case files should include personal data, the visa recipient's intended personal, family, school or business contacts in the United States, and travel arrangements.

Each recipient should be assigned a unique number for that and all subsequent visits to the United States. INS, Customs and State must work out a better system for accounting for and retrieving I-94s and other departure documents either at the port of departure of U.S. installations abroad. Aliens here on temporary visas during the annual alien reporting period would be required like all other aliens to

report their whereabouts to the Justice Department. Willful failure to report would be punishable by fines and denial of future visas.

As both a deterrent and as a source of operating revenue, the State Department of INS should make much more frequent use of departure bonds for high-risk visa recipients. In some cases, the requirement of non-refundable round-trip airline tickets would serve as an incentive to return abroad.

#### MAKING ILLEGAL IMMIGRATION UNREWARDING AND UNPROFITABLE

State and federal efforts to enforce labor, safety, environmental and occupancy laws in the workplace have fallen well behind the growth of the underground economy in the past two decades. Provisions of the former Kennedy-Hatch bill to build up labor enforcement as a deterrent to illegal immigration deserve support, but certainly not the bill's accompanying proposal to scrap employer sanctions.

**Shared Liability between Firms and Contractors.**—A disincentive to labor and immigration violations would be to make firms that contract out production or services share the liability for the labor and immigration violations of their contractors. The exposure of those firms, including farm operators, to fines would be a modest deterrent in itself. But more dissuasive would be the public association of big-name marketers of garments, electronics, furniture and processed meats with sweatshop conditions and exploitation of illegal immigrants.

Federal and state governments are not without blame here. They are the nation's largest employer of construction contracts, yet make little effort to ensure that those contractors and their sub-contractors hire only legally eligible workers. The construction industry, from all evidence, is heavily penetrated by illegal alien workers. Public contracts should stress compliance with alien employment rules under pain of ineligibility for future contracts, and be backed up by careful monitoring.

The remedy for employment and immigration abuses must also include more personnel and money for the compliance agencies, more cooperation among them and with INS, and more involvement of state and local labor, safety, law enforcement and tax agencies in the effort. There are well over 1,000 sweatshops in New York state. INS has only about 30 agents to inspect all businesses in southern New York state, and the state Department of Labor has only 20 inspectors—less than half the number needed for effectiveness.<sup>9</sup>

State and federal labor agencies must have the power, now held only by INS, to impose fines on employers found during their inspections to be knowingly using illegal alien workers. Fines should be increased and collected more diligently. Cooperating agencies should share in the fines and forfeitures from delinquent employers to defray the cost of this additional mission. The Labor Department's authority to sequester goods produced under flagrant violations of the Fair Labor Standards Act should be extended to egregious violations of the Immigration Reform and Control Act (IRCA), and applied more vigorously.

Commendably, S. 269 includes several provisions that would lower institutional barriers among state, local and federal agencies to cooperation on immigration enforcement.

**Citizen Involvement in Immigration Control.**—INS must improve its spotty record of acting on leads supplied by other enforcement agencies. The agency needs a much better arrangement for receiving and acting on leads from all sources, including private citizens. Now, many INS regional and district offices are unreachable by phone because of heavy workloads. Worth trying would be a publicly advertised 24-hour 1-800 hotline available to citizens interested in reporting suspected immigration violations. The agency should provide frequent widely disseminated reports on the use of these leads, as well as specific employers sanctioned.

#### PRIVATIZATION: COMPLEMENTING OVERLOADED BUREAUCRACIES

Washington over the years has seriously degraded INS's ability to enforce our multifaceted immigration laws by heaping new obligations on the agency without comparable increases in support. Washington has also ignored that the agency's core missions have ballooned as the populations it deals with have exploded in the last quarter-century. The foreign-born population grew by at least 14 million between 1970 and 1990, and the labor force of Mexico, Central America and the Caribbean has grown by 124 percent since 1970.

The predictable result has been a swelling snowball of demand for services, including a flood of time-consuming new petitions for family reunification, and the inspection of small one-half billion arrivals a year at U.S. ports of entry, and a growing mismatch between border enforcement resources and prospective illegal en-

<sup>9</sup> New York Times, February 6, 1995.

trants. Moreover, the number of naturalizations INS must deal with tripled between 1970 and 1992.

In the last decade, legislators have loaded the agency with additional responsibilities: legalizing 3 million aliens, increasing legal intake by 40 percent in 1990, administering "temporary protected status," judging asylum claims and admitting refugees, monitoring alien-citizen marriages for fraud, and combatting drug smuggling and terrorism.

The shift of INS's center of gravity toward service provision and adjudication, and away from enforcement is apparent in its budget fortunes since 1970. While the agency's overall budget between 1970 and 1990 increased by 234 percent in constant dollars, its outlays for enforcement increased by only 109 percent and its authorized personnel strength by only 74 percent. Not surprisingly, the agency's basic enforcement missions and morale have suffered.

Even if INS is able to recover from its chronic administrative disarray, poor image and deep demoralization and cynicism, the agency acting alone will not be able to effectively end illegal immigration.

Privatizing some of the record-keeping and monitoring aspects of immigration enforcement may be a way out. Reliance on the private sector in this field is not new: INS and other government agencies now use private collection agencies, and private bonding companies use bounty hunters to bring in to INS deportable aliens who have absconded.

INS has contracted out design and production of ID cards and maintenance of key INS databases. Contracting out to non-profit community organizations permitted INS to legalize 3 million illegal aliens between 1987 and 1990, through fraud was significant. Similarly, the State Department pays private voluntary agencies to do much of the work in resettling and assisting more than 125,000 refugees each year.

A major potential deterrent would be legislation making employers who knowingly hire illegal aliens liable for at least one-half the cost of the public assistance consumed by those aliens during their period of employment. In each of its regions or districts, INS would periodically release names and particulars on employers fined for violations. Private collection agencies, law firms, or non-profit public interest groups would be eligible to determine the amount of the firm's liability for restitution and proceed through negotiation, administrative action or litigation to recover that amount for the state or federal government.

Up to one-third of the amount recovered would remain with the collecting agency. The remaining half of the liability for public assistance costs should remain with the illegal immigrants themselves, which eligible private collection agencies would also be entitled to pursue by such means as garnishment if they remain in the United States.

Visitor visa categories in which the overstay rates are high and violation of conditions (such as working or changing schools without permission) are rampant are those for foreign university, vocational and professional students and trainees. In federal government parlance, these are known as F, M and J visas. For years INS has essentially left it to the universities and other sponsoring institutions themselves to police the program. Not surprisingly, ensuring immigration compliance among the some 700,000 aliens involved is not a priority for them.

Would students enter the United States in these categories and, in many cases, simply disappear, living for years in irregular status. Loose monitoring of student visas has facilitated the spread in the United States of African crime rings and Middle Eastern radical groups. FBI Director Louis Freeh has called for closer monitoring of foreign students on security grounds. Extensive student loan fraud by ineligible foreign students has been another cost of inadequate monitoring.

Privatization of the supervision of foreign student and trainee programs would free INS agents for use at the border or major areas of illegal settlement. Annual fees from the visiting students and from the institutions receiving them would underwrite the private sector firm selected, which would also share in fines levied. The firm would, with information provided by INS, State Department, the universities and the students themselves, build and maintain a national registry for tracking all persons entering in or converting to those visa categories.

Successful privatization here could open the door for private sector takeovers of the supervision of other types of temporary categories, such as tourists and "temporary protected status," administrative preparations and record keeping for naturalization. In every case, fees and service charges on the population served should finance the private sector contractor.

**Political Asylum: A World-wide Market.**—Most idealistic and impractical, and therefore the most magnetic feature of the legal immigration structure for illegal immigrants, is political asylum. As now implemented, this provision tells the globe's 5.4 billion non-Americans that if they can somehow enter the country and claim per-

secution in their countries of origin, they are entitled to live and work here for many months, if not years, during the creeping adjudication of their claims. An even greater inducement not lost on millions abroad is that even those ultimately denied asylum are not likely to be removed from the country.

The asylum system is subverted by its own compassion and commitment to "due process," which is "gamed" by hundreds of thousands from abroad. Because of interest group pressures, the scope of asylum's protection has been steadily broadened to include gays, women in male-dominated societies, those at risk of female circumcision, and until recently, persons claiming to flee China's family limitation laws.

The backlog of 421,000 asylum claims at the end of 1994, unlikely to ever be disposed of under present procedures, is expected to grow by more than 100,000 in 1995. Its existence is a standing invitation to another quick-fix amnesty. The remedies now being applied by the Clinton Administration will palliate but not cure the flawed premise of the asylum concept—namely that the United States is able and willing to provide due process to all the millions that can now get here and make a claim.

Special port of entry exclusion of fraudulent claimants, as proposed in S. 269, would send the right message abroad. Special exclusion should also be extended to manifestly frivolous claims. But no complete solution is possible as long as the pipeline of claimants itself remains wide open. Asylum claims should not be accepted from persons living in or able to return to the large number of countries where remedies to presumed persecution are adequate, where human rights standards are generally in line with prevailing third world standards, or where other remedies exist for the claimant (such as a change of residence within the country). Acceptance of claims from residents of all countries not included among the above would be decided case by case from the circumstances in each country.

#### CONCLUSION

The record of three decades of mounting illegal immigration point to a few inescapable conclusions. Turning it around will take a degree of political will and perseverance that has been lacking so far. The rising numbers of visa overstayers demand more rigorous overseas selection and far more active internal enforcement than the United States has demonstrated so far. INS must be reanimated, equipped and staffed to do its job. But that agency, however effective, cannot do it alone. New monitoring and enforcement arrangements involving a much wide range of public and private sector participants must be developed. NPG considers that S. 269 takes a number of important steps toward the changes needed.

Senator SIMPSON. Thank you very much.

Now, Dan Stein, please, from FAIR.

#### STATEMENT OF DAN STEIN

Mr. STEIN. Mr. Chairman, thank you very much for this wonderful opportunity to be here.

FAIR supports your legislation, Mr. Chairman. We try to take a long view of the issue and, by my reading of history, to disagree with my distinguished colleague whom I respect very much, Mr. Fuchs, the first employer sanctions legislation was actually introduced in 1949 by a young Peter Rodino in his first term in the House of Representatives. Therefore, in 1999 we will have been debating this issue for 50 years. In fact, the Mexican Government was pushing because they wanted to regulate the bracero program effectively, and they wanted to make sure they had total management of the braceros who were coming over.

The passage of proposition 187 in the last election proved several things. In light of the fact that it never had to happen, it really does inaugurate the first major national grassroots debate in 100 years calling for major reconsideration of some of the approaches that have been kicked around over the last 15 to 20 years.

Proposition 187 proved that there is an enormous consensus publicly about the need to ensure that all immigrants are legal and

that immigration serve the national interest. That consensus is not normally energized politically and doesn't reflect its views at the polls, but when it does, it is a powerful political force, as 187 and the vote in California showed.

There is an enormous role in basic public education on the issues. How did we get in this situation and how can we best fix the process and make it work? We have recently put out a report called "10 Steps to Stopping Illegal Immigration," the executive summary of which is in the back of my testimony and covers just about every area of deterrence, apprehension, and removal.

We applaud your effort to try to craft a compromise on the question of how we develop a documentary verification system for employer sanctions. We believe that the time has come for your legislation. Public opinion clearly supports it. You have taken adequate safeguards to protect privacy. Frankly, we believe that in using phony privacy arguments, many of the opponents of employer sanctions have sought to prevent the efficient and wise use of information to carry out legitimate immigration-related functions. We applaud your provisions and believe they strike exactly the right balance.

There is, however, one area which your legislation does not deal with, and that pertains to birth records. I call your attention to an article that appeared Sunday that is in Attachment 1 of my testimony from the Omaha World Herald front page, showing a rapid explosion in the use of both phony birth records and legitimately procured birth records. I call your attention to the Jordan Commission's report which talked about the development of model legislation to establish birth records so that California, for example, can verify birth records with Arkansas or Alabama in verifying citizenship in the dispensation of benefits or registering people to vote.

We think you have done a fine job in narrowing parole. As you may know, we are in litigation now with the Justice Department about the scope of parole as used in the lottery provision of the Cuban-United States Accord. We do not believe that Congress intended the parole program to be an open-ended, unreviewable authority to defeat the limitations imposed by Congress, and we are encouraged by your attention to that matter, as we are to what is a long-overdue change, the repeal of the Cuban Adjustment Act.

Surely, there is now bipartisan consensus on the need to treat Cuban nationals like every other group or nationality on the entire planet. The Cuban Adjustment Act is something that we would work very hard to see abolished. It undermines the moral force and integrity of our law.

We also believe that after years and years of never meeting the 50,000 cap, your move to try to reestablish that as a principle of our refugee admissions policy is overdue, and certainly supported by the overwhelming majority of the American people.

The border-crossing fee—it looks like we have got a tough fight; FAIR does, anyway, on this one. But we think there is no other way to come up with the funds, and it is only fair, after all, because other fees are imposed in the user fee context and for inspections in other areas.

We applaud the excellent process reform. I have some suggestions on how it might be strengthened and rendered perhaps a lit-

tle more efficient, but generally it is a fine job. It is certainly the best job we have seen in some time.

The mandate on State-Federal cooperation, which really goes back to this whole question of 187—187 never would have had to happen, had we not allowed the artificial barriers to be created between the States and the Federal Government. The Immigration Service should have a smooth and easy working relationship with State agencies, enforcement agencies, and service providers in verifying information of eligibility—either birth records with online birth databases in the 50 States or with the Immigration Service in verifying naturalization records or immigration documents.

One area that we might suggest you look at is the question of backlogs. As a result of the amnesty, we are looking at maybe 5.2 million aliens on the waiting lists or the backlogs. It will be difficult to ever get control of illegal immigration as long as so many millions of people have a present expectation of a future right to come. Mandatory interior repatriation down the line would be great as well.

All in all, just to conclude, we believe that it is possible for the country to maintain a fair immigration policy. It is also possible to be pro-immigration, to like immigrants, but at the same time fundamentally believe that the country needs less immigration, or maybe very low immigration or no immigration, for some period of time if the national need dictates it.

We will look forward to working with you and the Senate on this bill, as well as any future bills you may be considering this Congress. Thank you.

[The prepared statement of Mr. Stein follows:]

#### PREPARED STATEMENT OF DAN STEIN

Mr. Chairman, and members of the committee my name is Dan Stein and I am the executive director for the Federation for American Immigration Reform, or FAIR. FAIR is a national public interest membership organization working to end illegal immigration and implement a general moratorium or legal immigration. We support an immigration policy that serves the American people and our interests as a nation. With 70,000 members in all 50 states, FAIR has become the leading and most widely supported organization in America working for meaningful reform of our immigration laws.

Mr. Chairman, we would like to thank you for continued leadership in working for more realistic and enforceable immigration laws. We endorse the Immigrant Control and Financial Responsibility Act of 1994, as introduced on January 24, 1995, with suggestions and additions as mentioned herein. S. 269 is an example of serious immigration reform for it goes beyond just a vague promise of "increasing the Border Patrol." We know that you, more than any other member of the United States Senate, understand that controlling illegal immigration will require bold, new initiatives to deter, apprehend and remove illegal immigrants. We are excited at the prospects for immigration reform in the 104th Congress. S. 269 initiates such a process, and begins a new era of leadership and oversight that will put our immigration policy on the road to recovery. Were it to pass intact as introduced, it would be a major advance in the national effort to improve the enforcement of U.S. immigration laws.

Eliminating the magnets with procedures to deter illegal immigration are some of the fundamental issues addressed by this bill.

#### THE NOVEMBER ELECTION: IMMIGRATION ISSUE EMERGES AS "HIGH POLITICS"

The election last November, and the landslide victory of Proposition 187, demonstrated conclusively that the nation is paying dearly for the general neglect of immigration policy and oversight. California voters led the nation in seeking to voice a growing national sentiment that illegal immigration is out of control, and that the general level of all immigration is simply too high. National polls now reflect a

growing public antipathy towards immigration generally, and an emerging desire to see the nation again take a sustained "time out" or "pause" in immigration. Such a pause or moratorium is reflected in past cycles in American history (engendered by economic downturns or sustained periods when the country simply did not need immigration), and it has always followed the several large waves of immigration in our national pattern. Such a sustained "time out" is not unreasonable; it provides the breathing space in which to try to absorb and assimilate the huge wave of immigration just past. Furthermore, a sustained time out is what the general public would like to see.

#### BACKGROUND—GROWING PRESSURES ON THE BORDERS

Americans can't pick up their newspapers or watch television these days without seeing something deeply troubling about immigration, asylum fraud, or imported international terrorism. One thing is certain, something is wrong—terribly wrong—with our immigration policy and the Immigration and Naturalization Service (INS). Illegal immigrants pour into the country day and night, entering without inspection across land borders, overstaying visas and entering through fraud at major Ports of Entry. Immigration fraud and alien smuggling are commonplace in all 50 states. Violation of our immigration laws is an ever-growing phenomenon. Lines of people seeking immigration benefits at immigration offices around the country, and at U.S. consulates overseas, seem endless while backlogs of unprocessed applications continued to expand.

Mr. Chairman, we are now in the midst of the greatest surge of world population growth in the history of the human race. This rapid increase in population is the single most important reason for the ever-increasing numbers of people trying to come to the U.S. legally and illegally. In several recent publications, FAIR has sought to highlight the specific dimension of this phenomenon.<sup>1</sup> In doing so, we have sought to point out three key points: (1) Rapid population growth is placing untenable immigration pressures on United States. (2) Immigration and U.S. population growth patterns generally are regionally-concentrated, especially in coastal counties. This coastal county growth has far-reaching consequences that affect other parts of the nation and even the rest of the world. (3) Given population and natural resource/environmental pressures, there are now profound and urgent reasons to address immigration within a broader national population policy framework. We must now accept that the demand to come to the U.S. is far greater than the number of immigrants we can rationally accept. The age of migration is over and people must bloom where they are planted. Our immigration laws must reflect this new reality by stopping illegal immigration and implementing an immigration policy that is in the best interests of the American people and the United States.

We recognize that these are tough and difficult issues. It would be great if we could accept everyone who wants to come here. Deciding who can come and who cannot is not easy, and the entire framework for analysis is freighted with tough moral and ethical questions. We understand that, and to the end, appreciate the opportunity to participate in that debate with timely publications and commentary.<sup>2</sup> Nevertheless, the management of illegal immigration is a point on which there is a profound public consensus, and to that end we are seeking to advance the most effective, reliable, responsible means to bring about the effective end of illegal immigration.

#### *Ten steps to ending illegal immigration*

Mr. Chairman, last week the Federation for American Immigration Reform published a new report entitled "Ten Steps to Ending Illegal Immigration."<sup>3</sup> The report follows a 1989 report by FAIR entitled "Ten Steps to Securing America's Borders," and broadens substantially our analysis of what is needed to truly control illegal immigration. The new report addresses the three major components of immigration control—deterrence, apprehension and removal—in ten major subject areas with one hundred specific recommendations that must be addressed by Congress and the Executive Branch if effective entry controls are ever to be re-established. (The executive summary of this report is attached as Attachment I(b).)

Our report finds that illegal immigration cannot be controlled solely at the border. Stacking agents along the border—or relocating all INS and Border Patrol personnel

<sup>1</sup> See, Fox and Mehlman, "Crowding out the Future, World Population Growth, U.S. Immigration, and Pressure on America's Natural Resources." Federation for American Immigration Reform. 1992. 64 pp.

<sup>2</sup> See, Hardin, G., "The Immigration Dilemma: Avoiding the Tragedy of the Commons," with foreword by Charles Munger. Federation for American Immigration Reform. 1995. 140 pp.

<sup>3</sup> ISBN 0-935776-16-8.

to the high-crossing point in San Diego—will not work. Rather, the only effective method of controlling this problem is with a balanced approach that involves a full range of enforcement improvements that go far beyond the border: These include many legislative, procedural and processing reforms, beefed up investigations capacity, asylum reform, documents improvements, dramatic improvements to the efficiency of INS detention and deportation, limitations on judicial review, improved intelligence capacity, much better state/federal cooperation, and new funding sources.

As the emotional debate over Proposition 187 demonstrated, migrants are attracted by the prospect of what's on the other side: jobs, benefits, a higher standard of living, relatives—all the factors that make up the basket of attributes we call the American "quality of life." Curtailing unlawful migration means ensuring that persons who enter illegally or through false pretenses will not be able to obtain employment, benefits, education, housing, or other societal benefit without detection. This means the INS must be a key player in working with state, local, and private agencies in verifying citizenship and alienage status at these key intervention points.

S. 269 is a step in the right direction.

#### **DETER ILLEGAL IMMIGRATION: ESTABLISH TRUE BORDER ENFORCEMENT AND RE-ASSERT AN INTERIOR PRESENCE**

Of the 3-5 million estimated illegal crossers each year, INS claims only to intercept a third. None—I repeat none—of those apprehended along the border who are Mexican nationals are actually ultimately kept out of the country. Rather, they are simply slowed down a bit in their trek north. The conservative Census Bureau claims that at least 300,000 illegal aliens a year are estimated to settle permanently in the U.S. Not only is their presence an insult to every law-abiding immigrant who played by the rules and to those willing to wait in line, their costs and pressures on local communities is fraying the civic fabric and straining the patience of overburdened taxpayers.

Many of our state and local governments are facing an enormous crisis as a result of the flood of illegal aliens that continue to pour across our borders. However, the money is just not available for the federal government to reimburse the states year after year for what is certain to be a growing immigration-related tab. The appropriate response is to deter illegal immigrants from attempting to illegally cross our borders.

Today this deterrent does not exist. It is common knowledge worldwide that once an illegal immigrant makes it over the border, he/she is more or less here to stay. There is no serious interior or "non-border" enforcement of America's immigration laws, and there is absolutely nothing in the Clinton Administration's current plans or budget request that would alter that abysmal status quo. Aliens entering illegally are fully aware of the low probability of deportation, apprehension and even detection once inside the country, nor does it have a serious plan to make that possible. We must implement a system whereby illegal immigrants will learn that a successful border crossing does not turn into successful long-term residence in the U.S. If illegal immigrants cannot get jobs or public assistance and are very likely to be apprehended and deported then they will be less likely to attempt to come illegally in the first place.

The emerging political crisis in Mexico renders the necessary improvements envisioned by this bill all the more urgent. For too long, we have looked the other way while the Permanent Institutional Revolutionary Party, or PRI, has practiced blatant electoral fraud. Now, as the stability of Mexico becomes less reliable, we must anticipate heightened political and civil violence in the years ahead. The deflated expectations from NAFTA's promise, and the implications of the long-term austerity program just announced by President Ernesto Zedillo, mean that increasingly Mexicans will think that the United States is the answer. We must respond with a firm and consistent signal that this is not the case; that the United States is serious about border enforcement.

Illegal border crossings can be controlled and deterred by implementing the following provisions of S. 269:

*Increases the Border Patrol by 250 personnel annually until fiscal year 2000.*

This increase reflects that limitations on the capacity of the Border Patrol to train new officers each year. We would like to see a target of 10,000 total agents. Recent Border Patrol demonstrations in saturation presence such as El Paso's "hold the line" program have shown that with enough officers the high-traffic border points can really be controlled against illegal entrants who would walk across a land border.

*Authorizes the necessary funds to increase the number of interior investigators (about a 35 percent increase).* Our report discusses the abysmal state of INS In-

vestigations in some detail. Employer sanctions enforcement, criminal, anti-smuggling and general investigations have all been permitted to atrophy in recent years. There is evidence that investigations is the unit that is always sacrificed in INS when other pressing administrative, adjudications or border enforcement priorities capture management's attention. It is the one area of INS in critical need of major overhaul and improvement. Without strong investigations, there can be no effective non-border enforcement. Major problem areas, such as visa overstay detection and the abscondee apprehension, cannot be adequately addressed.

*Authorizes a pilot program on interior repatriation of deportable or excludable aliens designed to deter multiple unauthorized entries by aliens into the U.S.* This is a major change desperately needed to stop the enforcement spectacle raging around San Ysidro. Taxpayers spend tens of millions of dollars to pay agents to catch aliens, babysit them for a few hours, and then return them directly to the Mexican border where aliens wait for the next available opportunity to cross. The position of the Mexican Government, based on a newly-discovered "constitutional right" of Mexican nationals to go anywhere they want inside Mexico, is that we must return their nationals right to the border. This is a thinly-disguised tactic to encourage a rapidly growing labor force to move north.

*Provides for the institution of a land border fee to offset much of the cost of better border enforcement.* (Those who arrive at airports already pay \$10 per person.) The money would pay for more and better border inspection lanes to accelerate legal crossings and improve the commercial and personal relationships between the people on both sides of the border. Mr. Chairman, we strongly support this proposal, advanced by FAIR in 1989, and in your own bills even earlier. It has the support of both California Governor Pete Wilson and Senator Dianne Feinstein. It is supported by the Clinton Administration. It is consistent with the principle of users fees or tolls that those who benefit from infrastructure improvements should help should the costs. It has been endorsed by the Commission on Immigration Reform and nearly every major entity that has examined the issue has concluded that this is a key source of border inspections/enforcement funding. It is consistent with liberalized trade policies, and there is nothing in the North American Free Trade Agreement or our bilateral relations with Mexico or Canada that would permanently bar our ability to impose such a fee (minor negotiations would be required at a bilateral level). We do not believe it is feasible to expect adequate long-term funding for effective border security to be obtained in any other manner, and we will continue to fight for this proposal indefinitely.

#### ESTABLISH A NATIONAL WORK/BENEFIT ELIGIBILITY VERIFICATION SYSTEM—THE KEY TO CUTTING COSTS

Mr. Chairman, this proposal goes to the heart of last election's results. The United States needs to move its identification and eligibility verification systems into the 21st Century. This is how we cut social service costs for illegal immigrants in our midst. We need a system that will enable service providers, employers and state/local/federal officials to verify electronically information already required to be provided by law in precisely the same contexts and circumstances.

The artificial wall that has been created between state/local agencies and the Federal immigration authorities prevents vital cooperation in immigration law enforcement. This makes it impossible to ensure that persons applying for benefits and housing, or entering the criminal justice system, are in fact aliens and in a particular alienage classification. The barrier makes it possible for an endless parade of lawyers to go to court to enjoin any effort by state agencies to prevent illegal and ineligible aliens from receiving benefits or registering to vote. The people cannot prevent illegal aliens from working illegally and collecting social benefits unless Americans can differentiate at all levels of government between citizens, lawful residents, and everyone else. Illegal aliens enter through a variety of methods, elude detection and apprehension, and gain work and public assistance benefits through the use of fraudulent documents, breeder documents and aliases. Modern technology enables other law enforcement agencies to easily store and match identification data such as photographs and fingerprints. The same computerized databases should be available to the INS. We must establish a secure, tamper-proof work/benefit eligibility system. A secure tamper-proof card combined with a telephone verification system connected to a national vital statistic registry should be used by employers and social service providers to establish work and benefits eligibility. Such a system could be based on information that is already being collected today by a variety of

institutions and could be as simple as a more secure drivers license or Social Security card. Alternatively, U.S.-born citizenship could be verified through model state-by-state electronic birth record systems that have on-line interactive capacity. This proposal, suggested by the Commission on Immigration Reform, provides one of the most promising methods of curtailing the growing problem of false claims to citizenship and the use of phony birth certificates. (Please see the article from the Omaha World-Herald, Workers Get Valid Papers by Legal Means, March 12, 1995, at A1, appended as Attachment I.)

S. 269 establishes a pilot program for such a verification system through the following provisions:

Requires the development and implementation of a new, tamper-proof system to verify work and public assistance eligibility within eight years. The system may require a counterfeit resistant card and a telephone verification system.

Instructs the President to conduct pilot projects in the five highest immigration impacted states to demonstrate the effectiveness and feasibility of the new systems.

Establishes the Database for Employment Authorization Verification containing information from the INS and the Social Security Administration necessary for determining work eligibility for individuals residing in the U.S.

Mr. Chairman, we applaud your more forceful approach to getting this underway. Nearly ten years after enactment of the Immigration Reform and Control Act of 1986, 100 Stat. 3359 (1986), Pub. L. No. 99-603, almost no progress has been achieved in implementing the verification procedures envisioned by the employer sanctions provisions of that law. Part of the problem resides in the apparent lack of centralized responsibility under the President for getting the job done. Years of persistent non-cooperation by the Social Security Administration and a general lack of interest on the part of the Secret Service, and periodic opposition from a variety of White House personnel over several administrations have prevented effective progress.<sup>4</sup> Based on testimony taken in the House last week, the Social Security Administration is still not fully on board the development of such a system; until they are, the Clinton Administration's commitment to undertake a pilot verification project (one that will not be completed until after the next Presidential election), must be taken with some skepticism. Establishing a statutory requirement on the part of the President is key to insuring someone is responsible for bringing about the development of a comprehensive system, we applaud the requirement.

*Commission on Immigration Reform says "yes" to model state birth records systems.* Mr. Chairman, why not make the mandate stronger, and include state standards for the maintenance of their birth records? FAIR does not believe a great deal of additional study is required. At this point, the technologies are available and inexpensive, and pilot studies have already been done. None of us who worked on the original IRCA law expected that by now employers would still be relying upon the current array of easily-manufactured documents. We are tired of waiting. Without such a system, the entire foundation for effective non-border, interior immigration enforcement is lacking. Please move as swiftly as possible to introduce the system envisioned, and consider the addition of language for states to establish the electronic verification systems needed to verify native-birth status (and, by extension, our national citizenship).

*National I.D. Card imagery is bogus.* One point about the persistent, wrong-headed effort to label this a "national i.d. card." This term is intentionally invoked by the opponents of immigration reform because they like to generate the emotional baggage the term engenders. A national i.d. card implies—from the contexts and images that are invoked to accompany the charge by opponents—a documentary system that is abused by official agencies to violate people's privacy, regulate the movement of people intra- and inter-state, control people's behavior based on religion or political views, or to identify and locate persons targeted for discriminatory and violent political oppression. These images are deceitful and dishonest, and have no place in this discussion. Such abuses are always possible in any society that fails to protect its democratic liberties, and they could happen in the U.S. or anywhere today, using technologies available in 1930. But they are unrelated to this proposal,

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<sup>4</sup>We also had the opportunity to observe a virtual nonstop parade of delay and obstructionist efforts by a series of "inside the beltway" non-membership, foundation-funded entities that enjoy labelling themselves members of the "civil rights community." In fact, these organizations are either philosophically opposed to immigration enforcement, or are aligned with those interests seeking the ready availability of cheap, exploitable labor. Their allies in Congress have sought, until quite recently, the repeal of the entire system of employer sanctions for knowing employment of illegal workers. This has certainly had a chilling effect on the development of an efficient, reliable work verification system.

and it is offensive to so suggest. Mr. Chairman, your proposal seeks only to use the best available technologies to verify electronically information that is already used lawfully in the same circumstances today. No new information is to be collected, no new information is to be used in circumstances where it is not already used. Rather, currently required information would be verified. (As an aside, I note that many of the opponents of your bill are quite content to see the government collect data and information when they agree politically with its envisioned purposes. The American Civil Liberties Union, for example, is happy to see the Census Bureau acquire information on race, ethnicity and related matters to satisfy their own political goals, and they have warmly approved the use of Postal records by the Census Bureau for the 2000 Census. They also approve of government data collection by all manner of personal qualitative characteristics when they sanction its use in certain government enforcement contexts, such as bank lending practices. It's time to stop the hypocrisy and get on with the job.

#### COMBAT ALIEN SMUGGLING

The smuggling of aliens, the sad trafficking in human misery and bondage, has emerged as an unfortunate growth industry. Motivated by high profits, many—especially seafaring entrepreneurs—participate in a modern slave trade. Poor young people mortgage their future work to unscrupulous international criminal syndicates for a shot of working in America. The boldness and ruthlessness of the organized criminal operations during the 1990s has caused Americans finally to begin to grasp the extent to which migration pressures have rendered the nation vulnerable to a surge of uncontrolled inflows.

International syndicates exploit all the known loopholes in our immigration law enforcement, and they are deeply involved in smuggling aliens worldwide. Most crime rings know all the latest loopholes, and know the vulnerabilities of our entry controls to an extent never imagined by the average American citizen. These operations charge exorbitant fees for cramped unsanitary traveling conditions in dangerously deteriorated vessels. Their human cargo is often delivered to organized crime syndicates in the U.S., which keep the aliens in underworld servitude for years paying off the rest of the cost of their passage. Similarly, smugglers along U.S. land borders continue to subject clients to often-fatal illegal crossings after charging fees that can cost a person's entire life savings.

To halt this trade, FAIR supports the following provisions of S. 269:

Alien smuggling would be added to the list of crimes subject to prosecution under the Racketeer Influenced and Corrupt Organization (RICO) Act. Arrested smugglers would have to forfeit all property in any way connected to their trade.

Smugglers would be subject to increased imprisonment and fines under the United States Sentencing Guidelines.

Allows for the seizure and forfeiture of property used in the smuggling or the unlawful harboring of aliens.

Criminal investigations of alien smuggling operations and document-fraud rings would have federal authority for wiretaps.

*We need a "national commitment to an entirely new philosophy of immigration law enforcement coming from Congress, the President and the Department of Justice."* Mr. Chairman, we are committed to working for the enactment of these new penalties and powers. We would also like to mention that we believe these kinds of prosecutions remain a low priority for the offices of the U.S. Attorneys nationwide. Prosecutions for immigration law violations now enjoy strong public support; we want that support to be reflected in an aggressive prosecution program within the Department of Justice, including better use of civil forfeiture authority the Department already has. Heightened powers and penalties will make no difference unless the Department of Justice uses those powers.

This past election demonstrated that the general public is as concerned about illegal immigration as it is about any other kind of criminal activity, and it is looking for an entirely new philosophy of immigration enforcement from Congress, the President and the Department of Justice. This means there must be a renewed commitment to finding the millions of illegal alien residents currently in the United States. It also means that we must see an end to the persistent practice of allowing administrative and legal changes that weaken the capacity of the INS to enforce the law.<sup>5</sup>

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<sup>5</sup> Examples here include removal of the requirement that persons return home to obtain a permanent residence visa if they entered illegally, the ban on warrantless open-field searches, ex-

*Deporting Criminal Aliens Made More Difficult.* The Department of Justice has failed to appeal several decisions that we feel make it much more difficult to deport criminal aliens. In *Butros v. INS*, 990 F.2d 1142 (9th Cir. 1993), *Henry v. INS*, 8 F.3d 426 (7th Cir. 1993) (rejecting *Mater of Cerna*), and *Vargas v. INS*, 938 F.2d 358 (2nd Cir. 1991), the courts have held that "permanent resident" status continues beyond the issuance of an administrative final Order of Deportation, thus permitting extended opportunities to file and re-file for a section 212(c) waiver beyond whatever could have been contemplated by Congress.

In another set of cases unchallenged by this administration, the federal courts have held that domicile be "imputed" to the sons and daughters of mothers and fathers who might qualify for the 212(c) wavier. *Rosario v. INS*, 962 F.2d 220 (2nd Cir. 1992), *Higgins v. INS*, 969 F.2d 1042 (2nd Cir. 1992), *Lepe-Guitron*, 16 F.3d 1021 (9th Cir. 1994), and *Kahn v. INS*, 36 F.3d 1412 (9th Cir. 1994), 36 F.3d 1412 (9th Cir. 1994). This is not what was congressionally intended, and the result dramatically expands the substantive rights of what are, in many cases, illegitimate (out-of-wedlock) criminal alien short-term resident sons and daughters of Permanent Resident alien parents (who may have been in the country for seven years). Immigration courts report that proving parentage can also be time consuming and a drain on resources for a class of individuals never intended to be beneficiaries of a 212(c) wavier. Congress must periodically review these decisions and statutorily overturn them.

#### ASYLUM FRAUD AND REFUGEES—A GROWING AND PREDICTABLE PROBLEM

Our asylum system is overloaded, backlogged, fraud-ridden and broken down. Anyone who can afford the price of an airline ticket to this country can gain entry and then be amply rewarded with work authorization, social security number and the full benefit of the U.S. social welfare and health system simply by claiming political asylum. It is a potent magnet, and we are not convinced that the reforms put in place to date by the administration are adequate to the magnitude of the task.

There are security implications, as well. The bombing of the World Trade Center and the sniper shooting outside the CIA have highlighted the problem of political asylum fraud at our international airports: just about anyone can obtain a work permit and years of residence by simply asking for political asylum. This was never intended when Congress passed the Refugee Act of 1980, Pub. L. No. 96-212, 94 Stat. 102. While that Act modernized the statutory definition of "refugee," it did not intend to transform the domestic asylum program into a backdoor immigration program "free for all." That has happened because the INS has persistently adopted administrative strategies and legal interpretations that inadequately gauge the magnet effect of these changes on aliens who would flock into the country to exploit them.

Supporters of the status quo have argued that we must admit all claimants pending a comprehensive trial-type hearing, because of the unacceptable risk of sending even one person back to his persecutors. While the goal of protecting all persons is a noble one, and one we should always aspire to achieve, it must be governed by a rule of reason—we cannot provide the procedural process currently accorded to O.J. Simpson in his criminal murder trial to all persons who would request asylum. Further, the events of the past few years have raised the question whether admitting such people, prior to determining whether they pose a threat to the United States, poses an unacceptable risk to the American public.

The problem is one of balance. Prior to 1980, most people granted asylum had originally entered legally, and were people who, through unforeseen political changes after arrival, could not be sent or go home. But from 1980 to 1993, the avenues and procedural opportunities for asylum have been blown wide open.

Hundreds of millions of people worldwide would like to move to a nation such as the United States. If anyone who reaches this country can ask for an asylum hearing, how can we apply effective national security risk assessment and still manage the workload, the backlog, and the inevitable abuse of the system?

*The problem is how to provide an elaborate procedural process for asylum applicants when the potential class size is unlimited.* Under the banner of some new asylum adjudications bureaucracy, the Department of Justice has adopted a fraud-ridden and unworkable system that is neither constitutionally required, nor mandated by existing international obligations. Immigration regulations lay out the burdensome regulatory schemes: asylum applicants are entitled to a formal hearing, representation by counsel, opportunities to cross-examine hostile witnesses, transcript,

native language interpreter, right of appeals and right to reopen motions, and many of the other procedural protections we normally associate with the criminal process. These elaborate hearings in which the alien is required to meet a fairly lax evidentiary burden (and getting more lax all the time) are conducted under a total of about 100 administrative judges and a newly-created corps of 120 asylum officers. Result: The response to administrative overload is to rubberstamp applications through the system, and many people who do not deserve asylum get it.

#### UNINTENDED MAGNET AND IMPEDIMENT TO DEPORTATION

The hearing delays are themselves both a magnet and shield from deportation for otherwise deportable aliens. From less than 5,000 applications a year in 1980, asylum claims have exploded to over 150,000 a year and are growing. The system was never designed to cope with a caseload of this size. It now takes a year and a half to obtain a hearing, in itself an inducement to fraud and a shield for criminal activity.

Consider the case of Air Ahmal Kanzi, the Pakistani who is accused of the murderous terrorist act outside CIA Headquarters in January 1993. He orchestrated a pending political asylum claim and resided in and was employed in northern Virginia while he planned the attack. During the processing of his asylum claim, he could have purchased property, married an American citizen, fathered citizen children, and could probably have used most state-administered welfare programs in the period of time before his hearing came up.

All this stands in stark contrast to the alien who seeks to apply as a refugee from outside the United States. Currently there are some 18 million officially-designated "refugees" under the auspices of the United Nations High Commissioner for Refugees. Following thorough screening, refugees are admitted through multilateral resettlement agencies, and are provided federal resettlement assistance through formal consultation process allocating slots to regions where refugees are located worldwide. However, these fully reviewed refugee applicants have no elaborate process guarantees, no right to counsel and no right to appeal. Such inconsistent treatment between the asylum-seeker and the U.N. sponsored refugee applicant invites abuse by potential terrorist groups.

S. 269 addresses asylum fraud related issues through the following provisions:

Requires congressional legislation for admission of more than 50,000 refugees. An excellent innovation that restores the original intent of the Refugee Act of 1980. It would put discipline in the system and insure that these decisions are subject to periodic political review.

Denies, in most circumstances, the more elaborate procedures for asylum to any alien who presents fraudulent documents. This use of the tighter "credible fear" standard to overcome the use of fraudulent admissions techniques will help in reducing the incentive to use asylum claims as a means of obtaining fraudulent entry. (We suggest the "extraordinary circumstances" mentioned in Section 171 that, if present, would allow the Attorney General to entertain an asylum claim from an otherwise ineligible alien, be spelled out with greater particularity. Our experience is that those sorts of phrases become the rule, not the exception, unless narrowed to a greater degree.)

Encourages more careful granting of work authorization to asylum applicants and discourages "asylum preparers" who are convicted of fraud.

Repeals the Cuban Adjustment Act—a Cold War relic which has ended up creating two different classes of refugees—Cubans and everyone else—enough! This is one provision that surely, by now, must enjoy bipartisan support. The Cuban Adjustment Act, Pub. L. 89-73 (1966), demonstrates conclusively that there is no such thing as a temporary immigration benefit. It is a provision enacted for a particular occasion and set of emergent conditions, long past, and has instead existed to encourage virtually anyone opposed to Fidel Castro to climb into an innertube and head to Florida. It represents the quintessential magnet drawing Cubans to the United States, and stands as a monument to the degree to which special preferences will be tolerated when one particular group warmly defends its own special set of benefits.

#### ASYLUM VERSUS "MORE PROBABLE THAN NOT" WITHHOLDING OF DEPORTATION

The changes proposed here in asylum standards again beg the question why not just move to a unitary "withholding of deportation" procedure. Asylum as an independent basis for remaining in this country is no longer justifiable now that "Temporary Protected Status" has been added to section 244A of the Immigration and Nationality Act (8 U.S.C. § 1182(d)(5)(A)) and withholding of deportation remains available under section 243(h). Withholding of deportation seems a much more sen-

sible approach, because it implies use for a class of persons who entered legally in the normal course of affairs who cannot return because of factors that arose after entry (rather than the current program that seems to invite people to enter by whatever means necessary—often through safe countries—in order to make an asylum claim from within the United States).

*Re-limiting Judicial Review of Asylum Claims.* There is a need to limit and periodically restate the limits of de novo review of asylum claims. Recently, several decisions adverse to the government in this area have not been appealed by the Department of Justice. These include several 9th Circuit decisions that appear to circumvent the Supreme Court limitations on judicial review stated in *INS v. Elias Zacarias*, 112 S. Ct. 812, 502 U.S. 478 (1992) (the so-called “compelling evidence” test for judicial review of an asylum decision), finding that de novo review is appropriate where an evidentiary issue can be re-labelled an “error of law.” See, *Gheblawi v. INS*, 28 F3d 83 (9th Cir. 1994); *Nasseri v. Moschorak*, 34 F3d 723 (9th Cir. 1994); *Kotasz v. INS*, 31 F3d 847 (9th Cir. 1994); *Fisher v. INS*, 37 F3d 1371 (9th Cir. 1994). There are also several adverse precedents in the 7th and 1st Circuit of concern to us. The bottom line, however, is the present administration is not zealously defending its prerogative as against overly-aggressive judicial micro-management of the nation’s asylum system.

#### PAROLE AUTHORITY

Mr. Chairman, we applaud your effort to re-narrow the Attorney General’s parole authority. It is without meaningful standards of review and administration at this point.

When the Immigration and Nationality Act (INA) became law in 1952, it did not provide expressly for the admission of refugees. Refugee groups from Hungary and some other countries were “paroled” into the U.S. pursuant to a broadly-defined statutory power under old INA § 212(d)(5). With the Refugee Act of 1980, Congress sought to put an end to the use of mass parole to admit large numbers of persons otherwise ineligible for admission as immigrants. In amending section 212(d)(5) specifically to limit parole in individualized “case-by-case” situations, Congress wanted to prevent an open-ended expansion of the Attorney General’s parole power.

Since that time, there has been a continual administrative expansion of the use of parole, particularly in permitting inadmissible aliens the right to work and live in the U.S. during the pendency of protracted immigration proceedings.

The recent agreement with U.S./Cuba accord<sup>6</sup> amounts to a radical departure from even the general practice: In this accord, the Attorney General claims a right to use parole authority to admit non-refugees as immigrants under a novel immigration “lottery concept.” These individuals are in all other respects not eligible to immigrate. We believe this is an outrageous departure from the proper role of parole as a temporary, emergent tool for individual, non-immigration related situations that call for the short-term physical presence of an alien. The administration’s position is a declaration that the Executive Branch is not constrained by the limitations on immigration that Congress has enacted—and it is claimed as an adjunct of the President’s foreign affairs power and pursuant to a broad statutory delegation from Congress. If allowed to stand, however, we believe it would signal an end to control by the American people’s representatives over the level and character of immigration to the United States. The same unelected officials who have failed in their duty to control the country’s borders would acquire unlimited power to bring as many aliens into the country as they saw fit.

Because of the magnitude and danger of such a precedent, FAIR has filed suit against the Attorney General and the Commissioner of the Immigration and Naturalization Service. FAIR believes the Cuban agreement is unlawful and has sought through the courts to stop this agreement. The suit, *FAIR v. Reno*,<sup>7</sup> seeks to enjoin the operation of that portion of the accord granting substantive immigration benefits to aliens outside the immigration channels established by Congress. The positions taken by the administration in this suit are interesting. The Attorney General claims that no resident of Florida, indeed no American citizen, has the right to obtain judicial review of her decision to admit ineligible aliens. The Department also claims that Congress does not consider any aspect of the impact of immigration on communities in the United States when it establishes the immigration policy of the nation. The Attorney General also claims a broad, limitless, unreviewable power to admit ineligible non-refugees under an inherent power of the office.

<sup>6</sup> Accord announced and signed September 9, 1994, “Joint Communiqué.”

<sup>7</sup> Civil Action No. 1:94CV02459 JHG (Filed November 16, 1994).

S. 269 also takes measures to regain Congressional authority over parole authorization through the following provisions:

Tightens parole authority by requiring "urgent humanitarian reasons or significant public benefits" as grounds for admittance.

Requires that the number of parolees who remain in the country for more than a year be subtracted from the world-wide level of immigration for the subsequent year. This is a marvelous innovation, long past due. What good are annual immigration limits if parole and other truly permanent admission channels defeat the effective limits of the law. Unless parole, asylum and other "temporary programs" are truly temporary, those individuals allowed to remain should be deducted from annual permanent immigration limits. This is fair to the general public, an interest group that is ready to be considered in the mix of immigration policy deliberations.

#### DETENTION AND DEPORTATION

There is a critical and urgent need to expand the capacity of INS to identify, apprehend, and detain aliens who have been convicted of crimes, been ordered deported, or are awaiting deportation hearings. There are an estimated 5.1 million illegal aliens in the U.S. and yet the number of aliens who are deported is shockingly small: only about 40,000 a year. In fact, the U.S. deports fewer people than Mexico. The situation is so bad that even the INS has admitted, "The truth of the matter is, no one is deported."<sup>8</sup>

One of the greatest obstacles to immigration law enforcement is the fundamental inability of the INS to detain aliens apprehended for extended periods prior to removal. Criminal aliens and aliens awaiting removal are allowed to go free pending hearings. Many abscond and disappear for years. Others re-enter after deportation, but the INS lacks the manpower to apprehend those here illegally, even if local law enforcement is aware of the alien's presence.

Another obstacle to deportation is the process itself. The current deportation process is cumbersome, costly, and inefficient. Aliens fighting deportation can often delay their removal for years by filing multiple appeals of a deportation order, or by seeking new hearings based on evidence not introduced at the deportation proceeding. This must be changed and S. 269 attempts to do so. S. 269 tackles the problem through the measures:

Limits judicial review to habeas corpus.

Precludes collateral attacks. The preclusion of collateral attacks contemplated in Section 142(b) of your bill, Mr. Chairman, is a critical component in closing the loopholes. The use of collateral attacks to confound the enforcement of immigration regulations—usually based on some scattershot strategy to try to allege some form of inconsistency or bias in the administration of the law—has produced what one district court judge referred to as a gaping hole in the INS' defense line. There is no reason why regulations and operating instructions should not be reviewed in the context individual adjudications of deportability.

Reduces the incentive to delay deportation proceedings by limiting the qualifying time for certain relief from deportation. A long-overdue clarification of the law, in our view.

Authorizes the use of closed military bases for detaining excludable or deportable aliens.

Provides additional incentives for countries to accept deported aliens who are their nationals by withholding both immigrant and non-immigrant visas to nationals of such countries.

*Exclusionary rule in deportation proceedings—failure of administration to appeal.* Regrettably, we must again bring to this committee's attention the failure of the administration to appeal very adverse precedents that we believe would have a devastating effect on the ability of the government to deport aliens, the cases, *Gonzalez-Rivera v. INS*, 22 F3d 1441 (9th Cir. 1994), and *Orhorhaghe v. INS*, 38 F3d 488 (9th Cir. 1994), nullify Supreme Court authority that limits the use of the exclusionary rule in deportation proceedings (a civil proceeding). Again we see judicial rule-making that fails to consider the practical impact on the administration of U.S. immigration law. In the deportation context, an arbitrary imposition of the exclusionary rule could eliminate entirely the government's capacity to prove an individual is an alien and that the alien entered under any particular set of circumstances. Alienage is not a crime, it is a civil status that is proved by factors unrelated to the elements of criminal behavior. A person is either an alien or not. And the lawfulness of the status as determined in a civil proceeding is a wholly inappropriate

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<sup>8</sup> "Why Immigrants Shouldn't Worry About Deportation," U.S. Immigrant, Vol. 2, No. 5.

context for the imposition of the exclusionary rule. Such a rule helps shift the burden of proof of the government to deny relief, and place even greater procedural burdens on the immigration courts and the INS. It has a pernicious capacity to undermine the capacity of the government to engage in non-border, interior enforcement of the nation's immigration laws, especially to remove visa overstayers.

#### FINANCIAL RESPONSIBILITY

The second most important draw for illegal immigrants (employment being the first) is the availability of many forms of social benefits. Although many people believe that illegal aliens are entitled to only emergency health care and public education, this is not true. Illegal aliens are included in many public assistance programs including, Medicaid, Women and Infant Children, school lunch and breakfast, federal housing, and the Earned Income Tax Credit. Furthermore, illegal aliens gain access to benefits they are not entitled to through fraud and legal loopholes.

Document fraud and lax oversight by federal, state and local bureaucrats, has given ineligible aliens easy access. The same electronically verifiable system used to determine work eligibility should be used by social service providers to determine eligibility. As mentioned before S. 269 provides for such a system.

But illegal immigrants are not the only problem when it comes to public assistance. Today more and more legal immigrants are receiving welfare benefits. In fact according to a recent GAO report, the percent of immigrants who receive SSI or AFDC is higher than the percent of citizens receiving these benefits—6 percent of all immigrants compared with 3.4 percent of all citizens.

The plain and simple truth is that immigrants should not be on welfare. In fact, by law, immigrants who are deemed likely to become public charges are supposed to be excluded from immigrating to the U.S. unless the immigrant has a sponsor willing to ensure the immigrant's economic well-being. Therefore, if the immigrant falls on hard times, help is supposed to come from the sponsor, not the American taxpayer.

However, through the years court decisions have found sponsorship to be only a moral obligation not legally enforceable by law. Therefore, many immigrants have sponsors to come to the U.S., but still get on welfare as soon as possible. Moreover, today, because of the definition of public charge it is nearly impossible to designate a immigrant on welfare as a public charge so that, as required by law, the person may be deported.

Immigrant and their sponsors must be made financially responsible for the immigrant's economic welfare. S. 269 does this through the following provisions:

Declares illegal aliens and nonimmigrants ineligible for various public benefits funded by federal, state, or local government entities except for education benefits and emergency medical care.

Modifies the public charge section of the Immigration and Nationality Act to establish an alien's receipt of a government-funded benefit for 12 months or more as grounds for deportation.

Requires that the sponsor's affidavit of support the legally enforceable as a contract.<sup>9</sup>

#### CLOSING REMARKS

In sum, Mr. Chairman, we believe S. 269 is a good bill, and a good start. There are a few major areas unaddressed, such as eliminating the ban on warrantless open field searches, but it contains many of the most important elements of reform. We appreciate your interest and leadership on the immigration issue, and look forward to working closely with you in the future. I would be happy to answer any questions you may have at this time.

#### ATTACHMENT 1

[The Omaha World-Herald (OMHA)]

#### WORKERS GET VALID PAPERS BY ILLEGAL MEANS

(By Joy Powell)

When federal agents raided a Nebraska meatpacking plant March 4, they found what officials said is the biggest indication yet of an emerging problem: illegal workers using documents to claim they were born in the United States.

<sup>9</sup>See also, FAIR's testimony (of Dan Stein) before the House Ways and Means Subcommittee on Human Resources, on H.R. 4, January 27, 1995.

Agents with the Immigration and Naturalization Service say the raid showed a trend in which many undocumented workers no longer are using phony immigration documents. Instead, they are fraudulently obtaining birth certificates in other people's names and using them to get government-issued identification, including driver's licenses and Social Security cards.

Immigration agents said the arrest of 133 workers at the Excel Corp. beef-processing plant near Schuyler, Neb., was the most striking example in which the birth-certificate scheme has been found. For the first time ever in such a raid, agents found no phony immigration documents, only valid documents that were believed to have been obtained fraudulently.

"We went from INS documents, which are easier for us to identify because that is our own database, to them using birth certificates to get valid documents," said Paul Christensen, a supervisory agent with the INS in Omaha. "They're creating a trail which is more difficult to follow."

Officials say the scheme works, for the most part, because states do not automatically share information with one another on such things as birth and death certificates. There is no national registry that would help states check information presented by workers when seeking documents.

The birth certificate fraud makes it virtually impossible for employers to identify workers who do not have the legal documents to work in the United States, a meatpacking company spokesman said. It greatly complicates immigration investigations, an INS official said.

"The bottom line is that the raid illustrates in bold print that we have an emerging security crisis based on the arcane and antiquated way we keep birth records," said Dan Stein, executive director of the Federation for American Immigration Reform, a Washington, DC.-based group that bills itself as working to get "illegal immigration under control."

"It has the capacity to sink all the other INS-initiated document reform plans," Stein said. "Everything else they are trying to curtail document fraud can be undermined by this."

Birth certificates are stolen or counterfeits can be bought at an average cost of \$700, he said. The certificates also can be obtained easily by people who impersonate others when writing or visiting government vital statistics offices, he said.

Immigration officers know that some names are obtained from gravestones, newspaper obituaries or county death records, Christensen said. They suspect that other names may belong to U.S. citizens who are unaware that their identities are being used or to people who rent out their birth certificates, he said.

The fraudulent use of birth certificates began surfacing in recent years when packing plant officials noticed that different applicants were using the same identity.

"It is popping up," Christensen said. "We're the first ones that have seen it in a large-scale operation like Schuyler."

When agents raided the Monfrat Inc. plant in Grand Island in September 1992, he said, they found that nearly all the 307 workers who were arrested were using phony INS documents. The same has been largely true for other raids until the Schuyler operation, he said.

"As they discover how we find out about them, they change their method of operation," Christensen said of illegal immigrants.

Immigration agents in Nebraska are trying to track down vendors in the birth-certificate black market, which appears to be based primarily in Texas.

"They're rather easy to get," Joseph Lopez-Wilson, an Omaha attorney who specializes in immigration law, said of the birth certificates. "Almost anyone who has the right information—a birth date, parents' names—can get them, sometimes even through the mail."

Luis Barrios, 24, an immigrant from Mexico who now lives in Columbus, Neb., said phony identification cards and birth certificates commonly are hawked in the streets and parks of bigger cities, such as Los Angeles, Chicago and Dallas.

Barrios, formerly an Excel employee, said he believes the company's management knew that workers, who could barely speak English, had not been born in the United States.

Excel, a subsidiary of Cargill in Minneapolis, was not cited for any violations in the March 4 raid. The company cooperated with INS officials after a federal audit indicated that there were up to 200 illegal workers at the plant.

Of the 133 people who were arrested in the raid, 126 left the country voluntarily, and five appealed. Two were juveniles and were released.

Mark Klein, an Excel spokesman, denied that the company knowingly hired illegal workers.

Under federal anti-discrimination laws, he said, the company cannot question documents that appear to be valid. The company also cannot request additional documents beyond those an employees shows to prove eligibility.

"Our point is that because the market for fraudulent documents is so sophisticated now and because we cannot question the validity of the documents that appear to be genuine, employers are caught between a rock and a hard spot," Klein said.

Christensen, who led the INS raid at Excel, said the problem of fraudulent documents is nettlesome in another way: It stirs debate on whether the United States should have a national identification card.

"In the next few years," he said, "it's going to a hotly debated issue."

#### ATTACHMENT 1(a)

#### TEN STEPS TO ENDING ILLEGAL IMMIGRATION

(By Dan Stein, Executive Director, Federation for American Immigration Reform)

##### *Introduction*

The Federation for American Immigration Reform is proud to release "Ten Steps to Ending Illegal Immigration." We believe it is the single most comprehensive report released to date by anyone, anywhere, covering all phases of immigration law enforcement.

The report is divided into ten separate sections around three basic themes. These are: Deterrence; Apprehension; Removal.

Together, these three elements represent the totality of the immigration enforcement framework.

"Ten Steps to Ending Illegal Immigration" follows FAIR's earlier ground-breaking study, "Ten Steps to Securing America's Borders." That influential 1989 report was instrumental in demolishing a long-held American myth that land-border security was inachievable and impracticable. It represented several years of field work and on-site interviews.

This book represents the same type of painstaking research and analysis. Over 200 enforcement personnel of the Immigration and Naturalization Service (INS) were interviewed by a team of INS veterans for specific advice and recommendations. Legal experts and technical scholars provided review and comment. In total, the report contains 100 recommendations, all designed to work in concert to bring about meaningful enforcement of America's immigration laws. We believe this book is an important contribution to the public literature on regaining control of the nation's borders.

More important than any specific recommendation, however, is the need for a national reappraisal of why we have immigration controls. For years, our interest in enforcing immigration laws has been subordinated to other policy priorities. Judges have repeatedly required procedural changes that have diminished INS's capacity for identifying, apprehending, and removing illegal aliens. Such decisions imply the view that the interests of an individual alien in exhaustive procedural process far outweigh the general public's interest in an efficient, well-run INS. Powerful special interests (such as agricultural growers and labor contractors), have also objected to enhanced enforcement techniques. They have supported obstacles (such as the ban on open-field searches, see Step Five) that have hamstrung enforcement efforts. These special interests can only be overcome by greater involvement of the American public.

Since the 1970s, the capacities of the INS have been permitted to deteriorate in all three areas (deterrence, apprehension, and removal). As a result, we have fallen far behind the challenges of deterring an ever-growing population of would-be illegal migrants.

By the mid 1990s, the secret was out; immigration law enforcement had virtually collapsed. As the general public became aware of this sad truth., the political backlash got underway. The growing interest in state-run, grassroots ballot initiatives (such as that which passed in California in the 1994 mid-term elections) reflects years of accumulated public frustration. For too long, the state/local tax-payer has been asked to pay a growing share of the costs of poorly regulated immigration: schooling, housing, employment, medical care, and related costs for illegal immigrants or those caught up in the endless cycle of backlog and appeals.

Now the public is reasserting its desire for effective immigration enforcement. By sponsoring initiatives, signature campaigns, local demonstrations, and other such grassroots activities, the American people are saying that immigration enforcement

does matter, and that they want to end illegal immigration as much as any other form of criminal behavior. Only when this philosophy is restored in Congress and the Executive Branch will meaningful changes come in our ability to stop immigration lawbreakers.

How effectively the political branches respond to voters depends on basic public education. Politicians tend to believe the entire solution to stopping illegal immigration lies in stacking agents along the land borders, arm in arm. These perceptions produce a proliferation of proposals to "increase the Border Patrol."

While the Border Patrol does need many more agents to carry out its mission successfully, the key to enforcement reform lies in a balanced program of internal and border-related changes described in this report. Illegal aliens must face obstacles at every turn and stage (such as when applying for a job or welfare benefits). They must also know that, once apprehended, procedures are in place to determine their deportability and remove them promptly. Swift and sure repatriation after illegal entry is the only certain deterrent to illegal immigration. This takes more than just agents on the front line.

We must also acknowledge that the problem of illegal immigration is compounded by the fact that legal immigration is at an all-time high. The sheer volume of legal aliens using the INS's administrative channels is overwhelming the entire system. Moreover, family chain migration tends to inflate expectations among millions of relatives abroad, who, in turn, are induced to migrate illegally, in the hope of eventually becoming legal. Relieving pressure on the administrative apparatus through some type of general moratorium on immigration is essential if our immigration process is ever to be restored to the control of the American people.

In the meantime, these "Ten Steps" are provided as the way to begin the mammoth task of ending illegal immigration. They come not a moment too soon.

### *Executive Summary*

Illegal immigration is an enormous problem for the United States, and one that is growing. The INS estimated that in 1994 there were four million illegal aliens here: the Center for Immigration Studies estimated over five million. While most efforts to halt illegal immigration have focused on our southern land border. The difficulties are spread throughout the immigration system.

Spotty or haphazard efforts to end illegal immigration cannot succeed. In order to compose an overall, cohesive plan, FAIR's team of seven expert field researchers conducted in-depth interviews of over two hundred people whose professional lives are dedicated to ending illegal immigration. These personnel range from border patrol officers to INS top officials, stationed in every region of the country, many with over thirty years experience in the field. This study is not a criticism of their work or dedication; rather, it is an homage to it.

The result is "Ten Steps to Ending Illegal Immigration" (an updated version of our popular 1989 publication "Ten Steps to Securing America's Borders"). It presents a comprehensive plan to rework our entire system for dealing with illegal immigration. If enacted, this plan could bring an end to illegal immigration as we have experienced it in the recent past. It is important to realize that these steps are not separate, but are interdependent parts of an overall plan to end illegal immigration—a plan that can succeed.

### KEY RECOMMENDATIONS

#### *The loopholes that facilitate illegal immigration must be closed*

We need to:

- use expeditious exclusion at airports (See 2.4, 3.3, 3.6);
- limit the Attorney General's authority to parole aliens into the country (See 2.7);
- cap the number of asylum grantees (See 3.10);
- reinstitute open-field searches for the Border Patrol and stop seventy-two-hour deportation notices (See 5.6, 9.10);
- eliminate legalistic delaying tactics in immigration hearings (See 8.3, 9.7);
- eliminate the visa waiver program (See 1.6).

#### *The incentives for illegal immigration must be eliminated*

We need to:

- stop giving citizenship to the children of illegal aliens and foreign visitors (See 1.10);
- stop giving work authorization to those with pending asylum claims (See 3.9);
- establish a universal system for checking welfare and work eligibility (See 6.1);

establish that illegal aliens are ineligible for all public benefits by default (See 10.8).

*The penalties for violating immigration law must be increased*

We need to:

- render frivolous asylum applicants and immigration hearing 'no-shows' ineligible for other immigration status (See 3.7, 3.8, 8.10);
- make alien smuggling and document fraud into racketeering crimes (See 7.7);
- bar re-entry to any alien receiving a five-year prison sentence (See 9.6);
- withhold funds from localities that refuse to cooperate with efforts to end illegal immigration (See 10.7);
- deport aliens who become public charges and make sponsors accountable for them (See 10.9, 10.10).

*Existing programs that are particularly effective must be expanded*

We need to:

- widen the Border Patrol canine program and highway checkpoint system (See 5.7, 5.9);
- expand the Border Patrol canine program and highway checkpoint system (See 5.7, 5.9);
- expand the institutional hearing program and the special U.S. Attorneys program (See 8.5, 8.9);
- do more interior repatriation and telephonic deportation hearings (See 9.2, 9.4);
- expand the assets seizure program (See 10.5).

*Those parts of the government that deal with illegal aliens must coordinate their efforts better and more extensively*

We need to:

- improve coordination between border agencies and between intelligence agencies (See 2.10, 4.8);
- limit judicial review of immigration decisions and expand judicial deportation (See 3.5, 8.2, 8.4);
- give the National Security Council a role in ending illegal immigration (See 4.10);
- combine the INS work form with the IRS work form (See 6.9);
- expedite notification to INS on incarcerated aliens, including certified records of conviction (See 8.6, 8.7).

*A greater investment must be made in the personnel who combat illegal immigration*

We need to:

- increase personnel in Inspections, Intelligence, the Border Patrol, Investigations, and Detention and Deportation (See 2.1, 4.4, 4.5, 5.1, 7.1, 9.8);
- reduce temporary workforce in Inspections (See 2.3);
- dedicate investigators to work solely on employer sanctions (See 6.10);
- expand on-going training programs for inspectors, intelligence officers, and investigators (See 2.2, 4.6, 7.6);
- run systematic performance reviews of immigration judges (See 8.8).

*Top-of-the-line equipment must be available to the enforcers of immigration law*

We need to:

- provide a facility for classified information (See 4.2);
- establish equipment strategies for Intelligence, the Border Patrol, and Investigations (See 4.7, 5.10, 7.9);
- improve the vehicular fleets of the Border Patrol, Investigations, and Detention and Deportation (See 5.4, 7.8, 9.3);
- create a centralized case database for Investigations (See 7.4).

*New technology must be brought on line if the effort against illegal immigration is to have any future*

We need to:

- introduce new, up-to-date technology in Inspections, the Border Patrol, and Investigations (See 2.6, 5.5, 7.2, 7.3);
- create a solid intelligence database and a secure distribution system (See 4.1, 4.3);
- set up a verification system for welfare and work eligibility (See 6.6).

*Overview of the Ten Steps Plan*

Any plan to end illegal immigration must answer three basic questions:

The Question of Deterrence: How do we prevent illegal entry?

The Question of Apprehension: How do we catch those who do manage to enter illegally?

The Question of Removal: What we do with those we have caught?

Our plan answers these three questions:

The question of deterrence is addressed in Step Two Inspections, Step Three Asylum Reform, Step Four Intelligence, and Step Five Border Patrol.

The question of apprehension is answered in Step Six Eligibility and Step Seven Investigations.

The question of removal is answered in Step Eight Judiciary and Step Nine Detention and Deportation.

Step One Legislation and Step Ten Funding frame the plan by describing the overall environment needed for it to be effective.

#### STEP ONE: LEGISLATION

Violators of immigration law are not penalized enough under our present system. We allow communities to harbor illegal aliens with impunity; we reward successful immigration lawbreakers by conferring citizenship on their children; we allow legitimate immigration programs to become back doors for illegal aliens. Our entire legislative approach must be altered so that it is actually geared toward ending illegal immigration.

*We need to:*

1. Clarify the importance of policies to end illegal immigration.
2. Eliminate incentives to illegal immigration.
3. Create a unified plan to end illegal immigration.
4. Fund illegal immigration control realistically and consistently.
5. Increase the penalties for violating immigration law.
6. Close loopholes for illegal immigration.
7. Craft policy with an eye toward the future.
8. Focus on deterrence.
9. Tie anti-illegal immigration policy to the national interest.
10. Redefine citizenship.

#### STEP TWO: INSPECTIONS

The immigration inspections program is woefully understaffed and under-equipped. We are better at keeping out contraband foodstuffs than at keeping out illegal aliens and international criminals. We must start treating inspections seriously, as the front line against illegal immigration.

*We need to:*

- 2.1. Increase Inspections personnel.
- 2.2. Expand on-going training programs for inspectors.
- 2.3. Reduce temporary workforce in Inspections.
- 2.4. Allow expeditious exclusion at airports.
- 2.5. Expand pre-inspection programs abroad.
- 2.6. Introduce new up-to-date technology in Inspections.
- 2.7. Limit the Attorney General's authority to parole aliens into the country.
- 2.8. Widen the use of automated inspection procedures.
- 2.9. Widen the use of frequent-traveler inspection procedures.
- 2.10. Improve coordination with other border agencies.

#### STEP THREE: ASYLUM REFORM

The asylum system is a shambles, and needs a total overhaul. Illegal aliens have abused the asylum system to the point of breakdown. The number of asylum cases in 1993 was seventy-eight times greater than the number in 1973. We must close this back door for illegal immigration, and restore the credibility of the asylum system.

*We need to:*

- 3.1. Require declarations of intent to file asylum applications within thirty days of entering the United States.
- 3.2. Require asylum applications to be filed within forty-five days of entering the United States.
- 3.3. Require expeditious exclusion of asylum applicants without documents.
- 3.4. Reduce the steps for appealing denials of asylum.
- 3.5. Limit judicial review of asylum decisions.

- 3.6. Require expeditious exclusion for third-country transit.
- 3.7. Render frivolous asylum applicants ineligible for other immigration status.
- 3.8. Create penalties for failure to appear at asylum hearings.
- 3.9. Decouple work authorization from the asylum process.
- 3.10. Cap the number of asylum grantees.

#### STEP FOUR: INTELLIGENCE

Far too few of our resources go to gathering advance warning of trends in illegal immigration. Because the key to our deterrence strategy should be advance knowledge, we must beef up our intelligence network so that illegal immigration does not catch us unawares.

*We need to:*

- 4.1. Create a solid intelligence database.
- 4.2. Provide a facility for classified information.
- 4.3. Provide a secure intelligence distribution system.
- 4.4. Increase the number of intelligence analysis.
- 4.5. Increase the number of field intelligence agents.
- 4.6. Improve intelligence training.
- 4.7. Add equipment for Intelligence.
- 4.8. Improve cooperation among intelligence agencies.
- 4.9. Convert the country's existing intelligence resources.
- 4.10. Give the National Security Council a role in ending illegal immigration.

#### STEP FIVE: BORDER PATROL

The Border Patrol has been starved to exhaustion, and reduced to a cat-and-mouse game of border apprehensions. We must replenish and refresh the Border Patrol with additional personnel, new equipment, and better strategy.

*We need to:*

- 5.1. Increase Border Patrol personnel.
- 5.2. Complement apprehension strategy with deterrence.
- 5.3. Provide buffer funding for flexible strategy.
- 5.4. Improve the Border Patrol's vehicular fleet.
- 5.5. Employ state-of-the-art technology for border security.
- 5.6. Reinstitute open-field searches.
- 5.7. Expand the Border Patrol canine program.
- 5.8. Use structures along the border.
- 5.9. Expand the highway checkpoint system.
- 5.10. Establish an equipment strategy and standard.

#### STEP SIX: ELIGIBILITY

Penalizing the employers of illegal aliens and denying illegal aliens . . . benefits has failed due to our inability to identify who is and is not eligible. In this day and age, there is no excuse for not having the technology in place to determine who is legally in the country and who is not. We must put in place the means for employers and benefits-providers to make sure that illegal aliens get neither jobs nor welfare.

*We need to:*

- 6.1. Establish a universal eligibility system.
- 6.2. Give an eligibility card to everyone eligible.
- 6.3. Establish legal limits to the eligibility card's use.
- 6.4. Devise safeguards for the eligibility card.
- 6.5. Establish a national eligibility registry.
- 6.6. Set up an electronic verification system.
- 6.7. Record employers' use of the verification system.
- 6.8. Require all benefit-providers to use the eligibility system before dispensing benefits.
- 6.9. Combine the INS work form with the IRS work form.
- 6.10. Dedicate investigators to work solely on employer sanctions.

#### STEP SEVEN: INVESTIGATIONS

The Investigations program has been fighting forest fires and eye-droppers. The Investigations program has the daunting task of stopping all immigration crimes, frauds, and conspiracies and take place within our borders. We must give it the personnel and modern technology it needs to enforce immigration law within the country.

*We need to:*

- 7.1. Add Investigations personnel.
- 7.2. Adopt new investigation technology.
- 7.3. Set up a secure communication for investigators.
- 7.4. Create a centralized case database.
- 7.5. Allow wiretapping in immigration investigations.
- 7.6. Increase in-service training programs for investigators.
- 7.7. Make alien smuggling and document fraud into racketeering crimes.
- 7.8. Replenish the fleet of Investigations vehicles.
- 7.9. Establish an Investigations equipment strategy and standard.
- 7.10. Automate the updating system for foreign inmates.

#### STEP EIGHT: JUDICIARY

The judiciary, which should facilitate border security efforts, often hinders them. We must eliminate the loopholes, dilatory appeals, and other legalistic trickery that is preventing the enforcement of our immigration law.

*We need to:*

- 8.1. Establish sentencing guidelines.
- 8.2. Limit judicial review.
- 8.3. Eliminate collateral attacks.
- 8.4. Expand judicial deportation.
- 8.5. Expand the Institutional Hearing Program.
- 8.6. Expendite notification to INS on incarcerated aliens.
- 8.7. Require states to provide certified records of conviction.
- 8.8. Run systematic performance reviews of immigration judges.
- 8.9. Expand the program of special U.S. Attorneys for immigration.
- 8.10. Increase the penalty for failure to appear at a deportation hearing.

#### STEP NINE: DETENTION AND DEPORTATION

At present we cannot hold all the illegal aliens we apprehend, and cannot send them back to their home countries fast enough. Our present detention and deportation system must be able to handle more detainable aliens and deport them more expeditiously.

*We need to:*

- 9.1. Increase detention space.
- 9.2. Do more interior repatriation.
- 9.3. Expand the removal fleet.
- 9.4. Run more telephonic and electronic deportation hearings.
- 9.5. Expand the list of felonies triggering deportation.
- 9.6. Bar reentry to any alien receiving a five-year sentence.
- 9.7. Limit administrative discretion to waive or delay deportation and hearings.
- 9.8. Increase Detention and Deportation personnel.
- 9.9. Use former military bases for detention.
- 9.10. Stop seventy-two-hour deportation notices.

#### STEP TEN: FUNDING

Funding is the key to ending illegal immigration. By putting new funding mechanisms in place, it is possible to fund border security without bankrupting ourselves.

*We need to:*

- 10.1. Charge a border crossing fee.
- 10.2. Increase the port-of-entry fee.
- 10.3. Revamp INS user fees.
- 10.4. Increase appropriations.
- 10.5. Expand assets seizure program.
- 10.6. Make INS an independent agency.
- 10.7. Withhold funds from non-cooperative localities.
- 10.8. Establish that illegal aliens are ineligible for all public benefits by default, unless specifically made eligible.
- 10.9. Deport aliens who become public charges.
- 10.10. Strengthen the accountability of sponsors of aliens.

## ATTACHMENT 2

[Gannett News Service, March 9, 1995]

## MORE BORDER PATROLS WON'T FIX IMMIGRATION PROBLEM

(By Jim Specht)

WASHINGTON—With more than 3 million illegal aliens living in the United States, Congress must do more than beef up the Border Patrol to solve the nation's immigration problems, a leading reform group spokesman said Thursday.

Front-line immigration officials say the illegal immigrants already here must be found, more detention facilities must be built to house those who are caught, and quicker deportation procedures must be approved to ensure they leave the country, said Dan Stein, executive director for the Federation for American Immigration Reform.

"We've got to stop pretending (that) you can control illegal immigration by stacking Border Patrol officers at the San Diego port of entry," Stein said at a press conference. "If people \* \* \* know that if they get past the thin green line they're going to be able to get benefits and live comfortably without any fear of detection, we will never stop the increasing pull of illegal immigration."

The group issued a report Thursday based on more than 200 interviews with immigration officials across the country. "Ten Steps to Ending Illegal Immigration" calls for more investment in internal immigration controls in addition to the Border Patrol increases popular with Congress and the administration.

The federation, shunned as too hard-line by congressional Democrats in the past, has moved to the forefront of the immigration debate under reform-minded Republicans like Rep. Lamar Smith, R-Texas, and Sen. Alan Simpson, R-Wyo., the respective chairman of the immigration subcommittees of the House and Senate judiciary committees.

Many of the report's proposals are already in legislation being proposed by the chairmen, and committee staff members said FAIR's recommendations will be studied. Neither Smith nor Simpson was ready to take an official stand on the report, however.

Stein said the group still believes some limits must be placed on legal immigration, and the report includes such controversial elements as a border crossing fee and eliminating citizenship for children born to illegal immigrants in the United States.

But the primary focus is a continuing reform of the Immigration and Naturalization Service and elimination of a number of laws and court rulings that block efficient immigration enforcement, Stein said.

Recommendations include:

Charging a border-crossing fee and increasing other fees to help beef up inspector teams for ports of entry, which are seeing a dramatic increase in illegal immigrant smuggling, Stein said.

Find more detention space and increase personnel to end the practice of releasing illegal immigrants who are caught and asylum seekers waiting decisions, in hopes they will return for hearings. The group recommends using former military bases for detention, if necessary.

Require state law enforcement and social service agencies to cooperate with immigration officials, and streamline deportation proceedings on illegal immigrants who are discovered.

Immediately begin using a Social Security database system to check citizenship of those applying for jobs or benefits, and require employers and agencies to show they have used it.

Tighten restrictions on who can seek asylum and who qualifies for a tourist visa, and end automatic citizenship for children of illegals born in the United States.

Assign the nation's intelligence agencies to begin watching international trends that could lead to increased immigration, and make the National Security Council responsible for planning for ways to deal with the problem.

## ATTACHMENT 3

[The Associated Press Political Service, Mar. 9, 1995]

## BORDER CROSSING FEE OPPONENTS PRESS THEIR CASE WITH WHITE HOUSE

(By Michelle Mittelstadt)

WASHINGTON (AP)—Congressional foes of a border crossing fee are trying again to derail a Clinton administration proposal to link federal funding for border public works improvements to states' willingness to levy the fee.

Members of the Anti-Border Tax Coalition scheduled a late-afternoon meeting Thursday with White House budget director Alice Rivlin to restate their dislike of a crossing fee.

The fee—which the administration first proposed as mandatory for all people entering the United States from Canada and Mexico at land-border ports of entry—is bitterly opposed on both borders.

Naysayers contend it would harm trade and travel between the three countries, depress the economies of U.S. border businesses reliant on foreign shoppers, and impose an unfair burden on the border region.

Proponents say it could raise up to \$400 million annually, if imposed nationally, to improve congested border crossings, lengthen hours of operation and provide new crossing lanes.

At the direction of Rivlin's Office of Management and Budget, the White House last month backed off the mandatory aspect of its plan.

Now, the administration wants to offer states money for border infrastructural improvements if they agree to levy fees of \$1.50 per pedestrian and \$3 per vehicle entering the United States. Discounted passes would be available for those making multiple crossings. One proposal under consideration would offer monthly passes for \$10.

The revised plan continues to be drawing heavy opposition from northern and southern border lawmakers, as well as the governments of Mexico and Canada.

Last week, the Mexican and Canadian ambassadors met on Capitol Hill with members of the Anti-Border Tax Coalition to detail their continued opposition to a crossing fee.

In a letter to Rivlin earlier this week, coalition members said the fee "is definitely not an attractive option for our states or our communities."

The opponents are seeking a complete withdrawal of the administration's proposal, with no strings attached to border funding for additional Customs Service and Immigration and Naturalization Service inspectors, new crossing lanes and other infrastructure improvements.

"There has been much confusion as to what is going on with the tax," Rep. Solomon Ortiz, D-Texas, said Thursday. The Corpus Christi lawmaker has been one of the fee's most vigorous foes.

However, the idea of a fee continues to draw some support. This week, Senate immigration subcommittee Chairman Alan Simpson, R-Wyo., indicated that he considers the proposal still alive.

In contrast, Texas Republican Sen. Phil Gramm, who chairs the appropriations subcommittee that funds INS, has indicated the proposal is "deader than Elvis."

But the executive director of the Federation for American Immigration Reform, which advocates a tightening of U.S. borders, said Thursday he considers the fee has a "50-50" chance of passage.

"We just don't believe the issue is dead," said Dan Stein.

Senator SIMPSON. Thank you very much.

Now, Cecilia Muñoz, please.

## STATEMENT OF CECILIA MUÑOZ

Ms. MUÑOZ. Thank you, Mr. Chairman. Let me start by saying that NCLR President Raul Yzaguirre sends his regrets. He is sorry he was unable to be here to present NCLR's testimony today, but he asked me state outright that NCLR supports the goal of what this committee is trying to achieve. We believe, and have consistently believed, that the country has a right and an obligation to control its borders, and the question is not so much should we get there, but how do we get there.

It is unfortunate that in much of this country's immigration history, we have embarked on immigration control policies which undermined our basic values and the rights of our own citizens. I think proposition 187 is just a recent example of this phenomenon.

We believe that immigration policy ought to meet certain standards, a certain set of criteria. Immigration control policy ought to be effective and it ought not to come at the expense of the rights of Americans. That has consistently been our principle in terms of proposals for immigration control, and we would hope that that would be a principle that this committee would follow.

I would like to start by answering a question that Senator Feinstein posed to the previous panel, which was what kind of policy is really going to work. We think we have an answer to that question. NCLR supports three principal mechanisms that we believe are likely to be effective at controlling undocumented immigration without causing unnecessary hardship or the erosion of rights of Americans.

The first of those, which has been talked about a great deal today, is border enforcement. NCLR is generally supportive of the direction that the administration is taking in increasing the resources to border enforcement and to making sure that we are smart about how we engage in enforcement and that what we provide is a deterrent to entry rather than apprehension of folks once they enter the United States.

The second of these is visa control. It has already been mentioned that fully half of the undocumented people living in the United States today didn't cross the United States-Mexico border; they entered on valid visas and overstayed them. We are dismayed that that is so little a part of this immigration control debate because it is such a significant part of the issue.

Our testimony outlines several modest proposals which could help us begin to get at the question of visa control, including reconsidering the visa waiver program, creating penalties for failure to depart the United States, standardizing and automating consular offices, and potentially enlisting airlines in helping report visa overstays.

The third branch of what we would consider an effective immigration control policy has also been mentioned by the previous panel and this one, and that is labor law enforcement. It has been pretty well established that the employers who are the problem here are the employers in what Michael Fix referred to as the underground sector or the informal sector. These are employers who are deliberately skirting the laws. They are not likely to use a verification if we establish one. They are not abiding by the employer sanctions policy. They are intentionally hiring undocumented immigrants and intentionally violating a host of labor laws, which gives them, as Michael Fix put it, a competitive advantage.

The United States has had labor laws on its books for decades which could allow us to go after these employers. We know what sectors of the economy they operate in, but we don't enforce our laws in order to go after them. We believe that labor law enforcement which is targeted toward the industries where we know it will make a difference is ultimately much more cost-effective and

much more likely to be effective overall than the establishment of a verification system.

We oppose the creation of a national verification system, such as the one recommended by the Commission and the one in the legislation considered here today, for two principal reasons.

The first is that we don't think it is going to work. Again, as I illustrated, the employers who are a problem here are not likely to be using the verification system. There was a very compelling article in last Sunday's New York Times which described the nature of a sweatshop in New York in the garment industry which I think made a very compelling case. These employers are barely asking the names of their employees, let alone are they likely to be using a verification system.

The second is that we think the system is likely to be very vulnerable to fraud. It is very easy to steal valid Social Security numbers. I, in fact, have had mine stolen and someone is walking around with 10 credit cards in my name, thanks to the use of my valid number. We think the system is likely to be vulnerable to that kind of fraud.

Our second major concern is that we are convinced this system will exacerbate discrimination that Latinos and Asians and others already experience. The experience with the telephone verification system, which has been tested already by the INS, indicates several things. First and foremost, there is about a 28-percent secondary verification rate. That means when employers call in to the system, 28 percent of the time the system says we don't have an answer for you; we need to double-check. That is a big pain in the neck for employers, and that kind of problem in the data is likely to lead employers to conclude that certain kinds of job applicants are just too much of a bother to hire because their data may or may not be in the INS' data base, and those people are likely to be identified because of their ethnicity.

In addition, we think there is nothing to prevent the system from being misused before the hiring process takes place. Employers may be making this call to screen potential employees rather than check on the status of new hires, as is stipulated by the Commission and as I assume would be stipulated by the legislation.

In fact, of the nine companies that engaged in the INS pilot project, I have anecdotal information from a reporter that three of them admitted that they were using this system before they made any hiring decisions, and that is after signing an explicit memorandum of understanding with the INS that they would not engage in that kind of practice. That, I think, opens a door to discrimination which will be impossible to avoid.

Finally, as has been mentioned before, we think it is impossible to prevent this system from being used outside of the workplace, and I would just cite some examples of the kinds of behavior we have been seeing in California since the enactment of proposition 187.

Latinos and Asians are being asked in the grocery store, in the bank, at the pharmacy, at hotels, and at schools to present documents simply because of our ethnic appearance. This was not contemplated by proposition 187. In fact, proposition 187 is mostly not being implemented. Nevertheless, we are being carded in the sim-

ple act of buying groceries. Those grocery store merchants or other merchants in California who feel it is their civic duty to try and rid the country of undocumented immigrants presumably would have access to this system and could potentially use it not only to verify their employees, but to verify their customers based on their ethnic appearance.

We think that there are enormous dangers inherent in this system and we think it is unlikely to work, and we would just state unequivocally to the committee that the National Council of La Raza, and we believe much of the Latino community, opposes going in this direction because we believe immigration control can be achieved through other means which would not be so costly either in financial terms or in terms of the civil rights of Americans.

Thank you.

[The prepared statement of Ms. Muñoz follows:]

#### PREPARED STATEMENT OF CECILIA MUÑOZ

##### I. INTRODUCTION

My name is Cecilia Muñoz, and I am Deputy Vice President of the National Council of La Raza (NCLR), the nation's largest constituency-based national Hispanic organization. We represent over 180 community-based organizations throughout the U.S. which serve over 2 million Latinos each year. NCLR has a long history in the immigration policy debate; we are active in this arena because, all too often, the nation's immigration laws infringe on the basic rights of Latinos, including the two-thirds of us who are not immigrants. We approach these issues as a civil rights organization, with an interest in both protecting the rights of our constituency and promoting the values and principles of the nation as a whole.

I appreciate the opportunity to present testimony before the Subcommittee today; as you know, Mr. Chairman, NCLR has appeared before this committee many times to address the issues which are before us today. I would like to take this opportunity to reiterate the principles which guide NCLR's immigration policy work, and which inform the Latino perspective on immigration issues. Hispanic Americans, like all Americans, value the nation's immigration tradition. We believe that the country has benefited mightily from its tradition of welcoming those who enter our borders legally; it is well-documented that immigrants have enriched the U.S. economically, socially and culturally.

In addition, NCLR takes the position that the U.S. has a right and a duty to control its borders. We are in agreement with the overall goal of the current policy debate; indeed, the critical question is not, "Should the U.S. control its borders?" but rather, "How do we achieve this goal?" A NCLR has made clear to this Committee over the years, any policy which the Congress adopts to accomplish the goal of immigration control must be: effective in preventing illegal entry; reasonably cost-effective; consistent with the nation's laws and its Constitution; and consistent with our national values. The history of immigration control suggests that Congress is all too capable of undermining its laws and values in the name of immigration enforcement; the civil rights of Latinos in the U.S. have been undermined severely and frequently as a result. NCLR believes that it is possible, and essential, for the nation to adopt immigration control strategies which work, and which are consistent with the principles of which this nation is so justifiably proud. We approach this testimony from this perspective.

##### II. APPROPRIATE AND EFFECTIVE IMMIGRATION CONTROL STRATEGIES

Based on current evidence about the nature of the undocumented population in the U.S., NCLR believes that there are three central strategies which, in combination, are likely to be effective at controlling unwanted migration without creating unnecessary or unreasonable problems. These are outlined below:

*Effective and Professional Border Enforcement.* S. 269 as well as other legislative proposals would increase resources and personnel for the Border Patrol. In general, NCLR takes the position that it is preferable and more effective to deter migrants from entering the U.S. at the borders than it is to use enforcement resources to pursue such individuals in our neighborhoods and communities. Accordingly, NCLR supports efforts to increase the resources, effective-

ness and professionalism of the Border Patrol. We are encouraged but the initial results of the new enforcement strategy being employed by the Immigration and Naturalization Service at the border in El Paso and San Diego; ultimately, such efforts should be institutionalized to provide an effective and permanent deterrent. As we have testified before this Committee in the past, Border Patrol personnel have come to NCLR over the years to express their frustration that they were not being deployed in a way which presents a deterrent, but rather asked to hide on this side of the border and catch as many persons as possible once they had entered, because the latter results in significant apprehension statistics. We have long argued that such an approach defeats the purpose of border enforcement, and are encouraged that, at long last, the Border Patrol has been deployed in a more effective manner.

While there is reason to be hopeful about the increasing effectiveness of border enforcement efforts, NCLR is concerned that mechanisms to provide training and ensure professional behavior by enforcement personnel are not moving forward as quickly as measures to provide and deploy new officers. In our discussions with Border Patrol officials, they expressed concern that adding too many additional staff too quickly may make it difficult to provide proper training, could diminish the overall effectiveness of the Border Patrol, and could undermine efforts to ensure that enforcement officers follow appropriate standards and guidelines. Clearly, increases in resources to the border should not result in increased human rights abuse or increased inefficiency. While NCLR supports increasing the resources, training, equipment and personnel which are deployed to provide an effective border deterrent, we believe that such resources be used in a way which maximizes efficiency and professionalism rather than undermines it.

*Visa Control.* According to the INS, even if the U.S. were to control its borders absolutely effectively, we would have dealt only with half of the problem of undocumented immigration. INS data show that more than half of the undocumented immigrants living in the U.S. did not cross the U.S./Mexico border, but rather entered on valid visas and overstayed them. We are concerned that current proposals—indeed the overall immigration control debate—focus entirely on border control without addressing visa control and enforcement against persons who overstay visas. Without measures to address visa control, immigration reform proposals are incomplete. MCLR believes that there are a number of policy initiatives which can do a great deal to curb visa abuse; we should reconsider the visa waiver program; standardize and automate procedures at consular offices, consider reinstating requirements that all nonimmigrants periodically report their whereabouts to INS; mandate reports of overstays by airlines; and consider civil fines or other penalties for failure to report departures. Even the most modest of these measures can do a great deal to discourage visa overstays without adding unnecessary burdens on those who seek to enter the U.S. by legitimate means; clearly this problem must be addressed in any serious proposals aimed at immigration control.

*Labor Law Enforcement.* NCLR urges the strict enforcement of labor laws against employers who deliberately hire undocumented workers in violation of the law, and subject them to poor wages and working conditions. NCLR has long argued that policies which target employers who violate labor laws at the same time that they hire undocumented immigrants are more likely to reduce the “magnet” of jobs for unauthorized workers. We believe that effective labor law enforcement which is targeted to the industries and sectors of the economy where we know there is a problem is more likely to be effective in eliminating jobs for and abuse against undocumented immigrant workers. We are encouraged that the Clinton Administration has proposed to take initial steps toward strengthening labor law enforcement as part of an overall immigration control strategy. We strongly encourage this Subcommittee to endorse this strategy and to work to ensure that adequate resources are in place to do the job well.

### III. PROPOSED NATIONAL VERIFICATION SYSTEM

NCLR has long been on the record in opposition to national identification schemes, whether or not they involve a national identity card. This position is based on two principal factors: first, we believe such a system is not likely to be effective in controlling the job market for undocumented workers, and is likely to come at enormous financial and social cost; second, NCLR is convinced that even the most modest such proposal is likely to result in increased employment discrimination against Latinos, whether they are immigrants or not.

#### *A. An identification system is unlikely to be effective*

There are several major reasons that NCLR believes that the proposed system is unlikely to achieve its purpose of eliminating the job market for undocumented labor. The first of these is the well-established fact that the employers which constitute the biggest problems are those who are deliberately hiring undocumented labor in violation of the law. Such employers are unlikely to use a nationwide system, or are likely to find ways to skirt it, whether through counterfeit documents, or through obtaining and using legitimate social security numbers through fraudulent means. NCLR has little confidence that a major new enforcement scheme associated with an identification system is likely to be any more effective than the current regime against employers who have a stake in beating the system.

In addition, nearly all of the proposals would use the Social Security number as the basis for an ID system. There is substantial evidence to indicate that the Social Security card is not an effective personal identifier, and that, even if the security of the card itself is improved, the documents used to obtain such a card can be forged. The ability to obtain a Social Security card—or any new ID card—is hinged on the authenticity of “breeder documents,” the documents which individuals will use in order to apply for a card, or to access a new ID system. Unless the federal government is willing to implement and finance a massive program to ensure the security of all of the various types of documents which individuals can present to establish identity, birth and baptismal certificates, drivers licenses, school records and medical records, a “tamperproof” system cannot be achieved. In addition, documents experts agree that a new “tamperproof” card is likely to be forged by counterfeitors within weeks of its implementation.

Since the introduction of the Social Security cards in 1936, over 300 million numbers have been issued on 16 different valid versions of this card. It is estimated that there are some 250 million active Social Security numbers today; over 60 percent of these cards were issued without proof of the individual's identity or citizenship.<sup>1</sup> In addition, there is significant evidence that the use of the Social Security number leads to widespread errors in large recordkeeping systems.<sup>2</sup> Moreover, the success of any of the proposed ID systems would also hinge on the accuracy of data in the INS data base, which is notorious for having massive errors. In fact, the INS recently acknowledged losing the files of 60,000 people, and denying them work authorization because they had “not filed” their applications. In addition, the *New York Times* recently reported that there are as many as 650,000 errors in the INS database.

While call-in systems are regularly used to make credit card purchases, it is also true that as many as 40% of the credit records held by private companies such as TRW and Equifax have errors in item, which are very difficult for consumers to fix. In the case of an employment verification system, Americans will be depending on the accuracy of a huge government database in order to work. The INS has been testing a system with nine employers using its current database; nearly 30% of the time, the database does not contain the information requested, and a secondary check must be done. This requires employers to send a form to the INS and wait for an answer before a workers' status is verified. More than half of the time secondary checks were done, the worker was indeed authorized to work in the U.S.<sup>3</sup> Employers found secondary checks cumbersome and awkward; even with significant improvements in INS data systems, database problems are likely to hamper the effectiveness of the system, potentially leading to lost employment opportunities for authorized workers.

#### *B. A verification system will exacerbate employment and other forms of discrimination*

While proponents of a verification system argue that it may actually reduce some kinds of employment discrimination, NCLR strongly disagrees that it will have the overall effect of reducing employment discrimination against Latinos. In fact, there is substantial evidence to suggest that it will actually increase certain types of employment discrimination, and foster additional discrimination and harassment outside of the workplace.

First, though current law stipulates that all employers are required to check the documents of all new hires, over a dozen studies, including one by the U.S. General

<sup>1</sup> “Options for an Improved Employment Verification System,” Subcommittee on Immigration and Refugee Affairs, September 1992, p. 10.

<sup>2</sup> Hearing before the Subcommittee on Social Security, Committee on Ways and Means, House of Representatives, February 27, 1991, p. 96.

<sup>3</sup> Immigration and Naturalization Service, “Telephone Verification System (TVS) Pilot: Report on the Demonstration Pilot—Phase I,” March 30, 1992–March 31, 1993.

Accounting Office confirm that many employers selectively check only certain employees based on ethnicity, or engage in screening procedures before the hiring process takes place. NCLR believes that the creation of a verification system is likely to encourage and exacerbate such behaviors. A call-in system such as the one proposed by the Commission on Immigration Reform would have no reliable mechanism for determining when an employer is calling to verify a social security number, or for whom. In other words, employers will have ample opportunity to use the system to screen out job applicants in a discriminatory fashion, or to use the system only to check employees whose ethnic appearance suggests that they may be immigrants.

In addition, there is likely to be a continued high need for secondary verification due to errors in the INS database. Though the Commission proposes that no workers be fired or not hired as a result of needing secondary verification, it will be difficult to prevent this practice. Similarly, it will be impossible to prevent the very fact of problems in the database leading some employers to conclude that Latino and Asian employees are "too risky" to hire because they are the ones likely to run into data problems when employers access the system.

Moreover, even if the law specifies that the verification system can only be used in the employment context, there is no reason to be confident that this will be honored in practice. When the Social Security card and number were first created, there were limits and protections which have been either ignored or legislated away; the same is likely to happen to any new ID system, even if protections are added. Though the verification system does not exist, already there are proposals to use it for determining eligibility for public benefits, for law enforcement purposes, to track immunizations, identify "deadbeat dads," as well as an array of other purposes. While each of these enforcement schemes may be laudable on its own, the creation of a nationwide database creates the likelihood that is will be used for a variety of purposes, becoming the *de facto* national ID system for all aspects of American life. The potential for discrimination and loss of privacy as the system expands for such new purposes is enormous.

Furthermore, NCLR is convinced that the system, even without a card, will be used to exacerbate harassment which already occurs against Latinos and Asians because of their ethnic appearance. For example, there are hundreds of examples of abuse against U.S. citizens and legal residents in California as a result of the debate on and passage of Proposition 187. Though most of the proposition is not being implemented at the moment, this has not prevented some over-zealous Californians from asking for the documents of Latinos and Asians engaged in every day activities. For example, community groups have collected complaints against pharmacists, restaurant owners, hotel owners, grocery store clerks, school personnel, and health care providers who have asked for documents of their customers, clients, and students, based solely on their ethnic appearance. Hispanic Americans who are being "carded" at the grocery store can tell you that the likelihood that the over-zealous merchant who has access to a system to verify his employees is likely to use it on his customers. Even the most stringent protections in the system cannot prevent this from happening. NCLR is not confident that after-the-fact remedies will be included in the system at all. Even if they are, experience with other civil rights enforcement schemes provides us with no confidence that such abuses will be adequately addressed.

#### *C. A national identification card is inevitable once the system is created*

While many legislative proposals and the Commission's recommendation do not propose an actual ID card, legislation in the House does propose a card, and NCLR believes that a national identification card is the inevitable result of the creation of such a system. The Commission's recommendations point out that the system will be very vulnerable to fraud unless there is some way to ensure that the person presenting a social security number actually belongs with that number. While the Commission does not recommend a card, it acknowledges that the most practical and reliable way to accomplish this is with a card. Once a national ID card is established, it is likely to become an "internal passport" for at least some if not all Americans.

Many Latinos in the United States have already had negative experiences with identification cards which were designed to "help" them. For example, many Hispanic Americans, including Congressman Kika de la Garza and NCLR President Raul Yzaguirre, have experienced routine misuse of identification cards in border areas, where U.S. citizen Hispanics were once encouraged to carry cards to prevent being mistakenly classified as undocumented immigrants and subsequently detained or deported. Random document inspections and searches of Hispanics in the Southwest are already common; with use of a national identifier, such procedures are likely to be adopted in areas away from the border. Failure to carry a card at all times

could be perceived as a reason for search, detention, or arrest. Even a card which is designed for use only in the context of employment, by its very existence, is likely to be used more expansively, at the expense of the Hispanic community, and others whose accent or appearance makes them "suspect".

#### IV. OTHER CONCERN WITH THE PROPOSED LEGISLATION

##### *A. Public benefits*

NCLR is concerned that the two major benefits provisions in S. 269 are likely to cause great hardship to the most vulnerable immigrants and their U.S. families, or to refugees who have literally fled for their lives from their home countries. The first of these, the redefinition of "public charge," is excessively harsh and likely to undermine the basic principles of family reunification and refugee protection. This provision stipulates that, within the first five years of entry, an immigrant who uses a cumulative total of 12 months of public assistance is deportable. While NCLR does not disagree with the principle that an immigrant who becomes reliant on public assistance should be subject to deportation proceedings, this provision is an excessively restrictive definition of "public charge" which would, in particular, jeopardize refugees who need significant periods of time to adjust to life in the U.S., and are resettled with assistance of public benefits programs.

Even in the welfare reform context, which NCLR believes is excessively strict and punitive, the most restrictive limitation of benefits to eligible persons is a limit of two years, it is unreasonable to create even stricter limitations for refugees and immigrants. In addition, there should be a statute of limitations for enforcement of this provision. Under the proposed legislation, if an immigrant uses benefits for 12 months, then supports herself successfully without use of benefits for 15 years, she could still be deported in the 16th year if she comes to the attention of the INS by applying for naturalization. Such persons are clearly no longer public charges, and should not be punished for early use of benefits which have been followed by years of self-sufficiency and contributions to the U.S.

Similarly, NCLR is concerned that the extension of the sponsor deeming period from three years (five years in the case of SSI benefits) to indefinitely until the immigrant naturalizes is excessively restrictive, and will jeopardize the most vulnerable immigrant members of American families, particularly the elderly, blind and disabled.

The two major benefits programs which such immigrant families use are the Supplemental Security Income (SSI) program and the Medicaid program. When U.S. citizens sponsor their elderly family members, many of them support their parents entirely for the "deeming" period and then turn to the SSI program for assistance in meeting their family's needs. For many working class families, the high cost of health insurance makes SSI the only practical means of obtaining medical care for their elderly parents or relatives with disabilities. SSI is, in many cases, the only program available to these families, since immigrants who enter the U.S. later in life are not here long enough to work the 10 years necessary to qualify for the Social Security retirement program. For many U.S. citizens who already provide for their parents for five years without assistance, further restrictions in the SSI program may mean that they will be unable to reunite with parents, who may in turn have nobody to care for them in their home countries.

Unfortunately, recent increases in the number of immigrants using the SSI program have led to accusations that they are abusing the SSI program. In fact, immigrants do not "jump on" to SSI as soon as they are eligible. More than half of the immigrants who come to join family members wait more than 5 years to apply for SSI, even though they were eligible to apply several years earlier; almost 30 percent wait more than 10 years to apply, and use SSI only to supplement their low or non-existent Security retirement pensions. One third of the immigrants using SSI are refugees and others who escaped repressive governments in such countries as the Soviet Union, Romania, Cuba, Cambodia, Laos, Vietnam, Afghanistan, and Iran. These eight refugee countries alone account for 40 percent of the alleged "big jump" in SSI use since 1989.

Though there has been significant media attention to alleged abuse by some immigrant groups of the SSI program, there is little evidence to support this claim. In fact, the Social Security Administration (SSA) has characterized reports of extensive abuse by legal immigrants as exaggerated. According to SSA, "only a very small subset of non-citizens who apply for SSI disability may be involved in fraudulent

activities. SSA \* \* \* does not characterize it [incidents of abuse] as a widespread problem."<sup>4</sup>

The economic contributions of legal immigrants to the United States are well documented. Immigrants earn almost \$300 billion in income and pay over \$70 billion in taxes, sums much greater than the \$5.7 billion they use in welfare benefits when they fall on hard times. There has been a great deal of public attention to a variety of studies attempting to quantify the costs of providing services to all immigrants, and weigh them against the economic benefits accruing from the presence of these immigrants in the U.S. The most credible estimates, which include a variety of non-welfare related programs, like public education, indicate that immigrants contribute at least \$30 billion more to government coffers than they use in services.<sup>5</sup>

Most of the attempts to create a "balance sheet" to quantify the costs and benefits of immigrants ignore the various and well documented contributions of legal immigrants to the national economy. According to a recent synopsis of the literature prepared by the Urban Institute, not only do immigrants create more jobs in the economy than they fill, but recent immigrants from abroad create as much employment growth as internal migrants from other areas of the United States.<sup>6</sup> According to the U.S. Department of Labor, immigrants keep some U.S. industries competitive by increasing returns to capital, and increase aggregate employment through higher rates of self-employment than natives.<sup>7</sup> In addition, the positive economic contributions of immigrants to various sectors of the business community are only beginning to be documented. For example, in one business alone—the U.S. long distance telephone market—ATT, MCI, and Sprint earned \$6 billion from immigrant consumers in 1992, more than all federal welfare payments to immigrants combined. Similarly, recent media reports indicate that the slump in the real estate market in San Diego has begun to be reversed, largely because of immigrant demand in the housing market.

Though some proponents of cuts in the availability of benefits to immigrants argue that it is reasonable to expect immigrants' sponsors to provide complete financial support, in fact the proposal raises serious equity questions. The U.S. benefits mightily from the economic activity of immigrants and their family members. The vast majority of families which will be affected by the proposed cuts are U.S. citizens, who pay taxes, and are less likely to use public services than natives. Reducing or eliminating the benefits which go to immigrant family members is tantamount to telling a large group of U.S. citizens that their tax dollars will contribute to the support of other people's parents, but not their own, simply because they are foreign born. Such a policy not only creates unnecessary distinctions between Americans based on citizenship status, but sends a signal to our proudest citizens—those who became Americans by choice—that even when they become U.S. citizens they and their families will continue to receive different treatment than their neighbors.

Finally, it is unreasonable to expect that elderly, blind and disabled immigrants, those most likely to be affected by changes in the deeming procedures, will simply naturalize if they need access to services. There are a variety of reasons that this is simply not true, especially for the group of immigrants most vulnerable to reductions in benefits programs. Most immigrants do not naturalize as soon as they are eligible. In fact, for immigrants from many parts of the world, the wait is considerably longer. For example, immigrants from Latin America typically wait nine to 15 years to naturalize. European immigrants typically wait ten years before becoming citizens.<sup>8</sup> The group most likely to be affected by cuts in benefits programs, the elderly, blind and disabled family members of U.S. citizens, are the group least likely to naturalize. Though the naturalization laws provide more lenient procedures to persons over 55 years of age, these procedures only apply to those who have lived in the United States for at least 15 years. Data from the Immigration and Naturalization Service (INS) show that age plays a role in the decision to naturalize. According to the INS, "The probability of naturalizing \* \* \* is highest for persons who were 23 years old when they became immigrants \* \* \* Age 40 is the dividing line for naturalization rates above and below average."<sup>9</sup> According to INS data, after approximately age 50, naturalization rates drop well below 20 percent.

<sup>4</sup> Office of Social Security Administration, Correspondence between SSA staff Dick Griffith and Brandon Mitchell, of the Congressional Hispanic Caucus, July 20, 1994.

<sup>5</sup> Setting the Record Straight: Immigration and Immigrants, The Urban Institute, 1994.

<sup>6</sup> Ibid.

<sup>7</sup> The Effects of Immigration on the U.S. Economy and Labor Market, U.S. Department of Labor, 1989.

<sup>8</sup> Source, Immigration and Naturalization Service, as cited in "Unlocking the Golden Door," National Council of La Raza, 1991.

<sup>9</sup> Source, 1992 Statistical Yearbook of the Immigration and Naturalization Service. These data are from an INS analysis of a single cohort of immigrants, those who arrived in 1977, to deter-

Several studies document significant obstacles to the naturalization process which deter would-be citizens from applying. The first of these is the relatively unfriendly process at the INS. Very little outreach is conducted; applicants must get their own application forms, which in some cases can only be obtained after a significant wait at a busy INS office. Application forms are in English, and often are returned if not filled out correctly. After forms are submitted, many overburdened INS districts have long waiting periods before an interview is scheduled. For example, in Los Angeles the current wait for a naturalization interview is 210 days, in San Francisco the wait is 360 days.<sup>10</sup> According to INS officials, the Los Angeles district office is receiving as many as 1,000 naturalization applications per day; the backlog is likely to grow significantly if this trend continues.

Fear of the application process, a substantial naturalization fee, unavailability of English classes, and long processing delays have all conspired to keep many of those eligible for naturalization from actually going through the process. Even if these factors were to change, the INS is unable to keep up with current application levels, let alone increased levels. Some advocates estimate that, if the over 9 million immigrants eligible for naturalization were to apply it would take the INS 50 years to process their application.<sup>11</sup>

The INS interview and the naturalization examination also deter many would-be citizens. Many are reluctant to go through the process unless they have taken English and civics classes, which are in short supply. Many others are so terrified of the exam and the INS interview that they avoid the process altogether.<sup>12</sup> While the INS has recently announced its plans to improve the process somewhat, these plans have not yet been fully outlined, nor have funds been appropriated to fulfill them. Improvements in the naturalization process must, as a matter of fairness and equity, accompany any changes in benefit program eligibility tied to citizenship status.

#### *B. Law enforcement provisions*

NCLR is concerned about several provisions of S. 269 which would severely restrict remedies which are available under current law under the discretion of an immigration law judge or the INS. These programs are discretionary, and persons seeking relief under them must meet a stringent set of requirements; the reason for the existence of such programs is to provide relief to persons who can demonstrate compelling circumstances to be allowed to remain in the U.S. There is no evidence or even argument that such procedures are being abused; restricting them will cause enormous hardship to persons who are parts of the U.S. community. For example, the legislation would remove most discretion in the case of a person who has used false documents even for relatively innocent purposes; and would severely limit the availability of suspension of deportation, which is currently granted only to those persons who can demonstrate that they or their families would endure severe hardship if they were deported. Even an individual who worked with a fraudulent document because the INS lost his files or failed to provide the legitimate work authorization card on time would be severely penalized and subjected to deportation because of the failure of the INS to act properly. Under the proposed legislation, there would be no discretion to provide relief to persons in difficult circumstances, or whose families would be likely to endure severe hardship.

In addition, the proposed legislation would prohibit states from defining the ways in which local law enforcement personnel communicate with the INS. Several states and localities, like the cities of New York and Chicago, have enacted local laws under both Democratic and Republican administrations which provide that certain communications with local law enforcement officials are confidential and should not be reported to the INS. These provisions are in place simply to allow law enforcement and public safety personnel to carry out their duties without creating fear in the community that they are simply acting as agents of the INS. If persons in local communities, even legal residents who may fear for the safety of their family members, are unwilling to approach law enforcement authorities to report a crime or a public safety hazard, the entire community suffers. Such local laws are in place because local leadership believes that they are in the best interest of the entire community. There is no evidence that such policies foster undocumented migration;

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mine the naturalization rate, that is, the percentage of persons eligible to naturalize who actually go through the process.

<sup>10</sup> Statistics from the American Immigration Lawyers Association Monthly Mailing, January 1994.

<sup>11</sup> From comments given by Kevin De Leon, One Stop Immigration and Educational Center of Los Angeles, at the National Summit Conference on Immigration, Riverside California, January 7, 1994.

<sup>12</sup> These and other obstacles are documented in several reports, particularly "The National Latino Immigrant Survey," National Association of Latino Elected and Appointed Officials, 1989.

Congress should not eliminate local governments' ability to enact laws to provide for the maximum protection of their residents.

#### V. CONCLUSIONS

In conclusion, Mr. Chairman, NCLR believes that it is important for the nation to engage in a constructive debate on immigration reform, one that is consistent with our national priorities and values. Indeed, NCLR takes a particular interest in this debate, not only because the rights of all Latinos are at stake, but also because historically when Congress enacts sweeping immigration reform, and promises effectiveness, it is invariably the Latino community which suffers the backlash when such measures fail. We thus have an interest in both appropriate and effective immigration reform, as well as a thoughtful and constructive debate.

NCLR urges the Subcommittee to consider a combination of border enforcement, visa control and labor law enforcement as an achievable and effective course of action. We discourage proposals which are unnecessarily punitive or restrictive. We look forward to a constructive discussion, and we are prepared to assist the Subcommittee in any way we can as it undertakes this important policy debate. Thank you for the opportunity to provide this statement this afternoon.

Senator SIMPSON. Thank you all very much. We will go forward with questions in rounds of 5 minutes, and we should be concluded in a rather short time, but I have a good resource here in front of me and, as I say, we are going to do something this year.

I know one thing. I think all of you might agree, if we do nothing, the result will be rather appalling. Would you agree with what I am saying, all of you?

Let the record show that there were six nodding heads. That is what we used to do in the courtroom; it was very clever.

I do appreciate that because I feel that, and I said before, either we do something or it will just get worse and worse. Proposition 187 is out there and it is being considered by States; it is being considered for legislation. I agree with some of it. I don't agree with all of it. I do not think it was, quote, "racist." I think it came from people who were plain disgusted, just plain disgusted. They know something is wrong and that is the way to show it.

Dr. Ferris, you asked why we were doing a refugee provision in this bill, and the answer is very evident to me, at least, that this is an immigration control bill. Unfortunately, our refugee policy has gotten so out of whack that it has become part of the control. The normal flow is 50,000, but average admissions in the last 5 years are 118,000, with hardly any recognition—when we have our times with the House Judiciary Committee and the Senate Judiciary Committee, we have people, we have groups even, who urge the bringing in of immigrants and call them refugees because you can bring them in as a refugee and this Government will take care of them. You bring them in as an immigrant and you take care of them.

They say, well, I don't want to do that. Well, then, we will just say they are refugees. That is happening and has happened. I don't think it is good. I think it is crude, but the cold war has been over since 1989 and we are still bringing in double the normal flow of, quote, "refugees" while the systems are being manipulated.

U.S. immigration law includes a provision which creates a presumption of refugee status; that is, if you are from a certain country or if you belong to a certain group, then the United States presumes you are a refugee. These individuals are then admitted even though they have not individually, case by case, shown any well-founded fear of persecution as individuals.

Personally, I feel, obviously, that these special treatment provisions in our refugee law undermine the entire policy, and I have strenuously opposed them, which is a very lonely battle where you can get called a lot of nasty names. I feel we should always on a case-by-case basis bring in those individuals who have a genuine fear of persecution, as defined under the U.N. and U.S. law. So you know where I am coming from.

Those without a well-founded fear of persecution should emigrate to these United States through our regular immigration programs, but should not jump to the front of the line as, quote, "presumed refugees," when those who earn that status or have conferred upon them that status are truly the ones we are trying to help.

What are your thoughts on that troubling matter?

Ms. FERRIS. I think when you look over the history of U.S. refugee policy and see all the designations of particular groups, it is troubling when you are talking about universal standards, and so forth. Two of the largest groups, particularly Southeast Asians, which will be winding down in the next year or so, and the Lautenberg amendment which expires next year—there may be some way of moving beyond the cold war to looking at a resettlement policy that corresponds to the needs in the world.

You know, Senator Simpson, the number of refugees in the world has increased dramatically from 9 million in 1980 when the so-called normal flow was mentioned to perhaps 22 million today. Most refugees don't need or want resettlement, and yet there should be a relationship between what is happening in the rest of the world and our own resettlement policy.

We are very worried about the signal it would send to other countries if we were to go to 50,000, from 110,000 this year—countries hosting far larger numbers of refugees and countries with serious economic and social problems and backlash against immigrants. Tanzania in a single day took 250,000 people. There are many examples like that, and countries have looked to the United States to provide some moral leadership.

It isn't just the United States giving money or assistance for refugees over there, but a willingness to welcome refugees here. Certainly, in spite of the backlash against immigrants, we have seen in the church community a real welcome, openness, and receptivity to welcoming refugees with many, many unsolicited calls from churches saying, we would like to sponsor a refugee. So there is, I think, a real basic support for the notion of refugee admissions and for refugees coming here as part of our heritage.

Senator SIMPSON. Well, I think what gets lost in the dealings with people who do feel just as you do, and strongly so—and that is the wonderful part of America; no country on the face of the Earth takes more refugees for permanent resettlement than the United States of America, not even by half. So when you talk about any other country and 250,000, those numbers don't fit when you are talking about permanent resettlement. They get people aroused and engorged with what is happening, and should, but if there is a signal to be sent, it is the signal that is being sent to us by Canada and Australia and all the other taking countries who are trying to shut it down and saying, what are you people doing, you make us look bad; you keep doing it and we are trying to close it down.

Whether it is asylum in Germany or wherever it is, that is the signal that is going across the international boundaries.

We take in more than all of the other countries of the world, and yet the UNHCR and our Government and many experts feel that repatriation should be the real goal; resettlement does not address any fundamental problems in the country of origin. In fact, we take away their best and brightest and put them in California. Cambodia would be an experiment on that. Who is to go back and get Cambodia started again? They are all in California, and they are not going to go back.

So when the U.S. Government brings individuals halfway around the world, we are, in effect, discouraging these individuals from ever returning home to stabilize their country, to get it back, to bring it to where it was. Then, of course, we have folks like the bearded fellow to our south who have completely exploited our generosity and our refugee resettlement programs to permanently remove internal dissenters and strengthen his own internal control, and that is Fidel Castro.

So, shouldn't refugee resettlement into these United States be a last resort, only to be used for individuals whose situation will simply not allow repatriation or regional resettlement, and hasn't it been the policy of the UNHCR since the time we passed the Refugee Act that third-country resettlement is the third and the least preferred durable solution to the refugee problem? That has been the policy of the other two major refugee resettlement countries, Canada and Australia, as well. So where are we now with this policy we honor in the breach?

Ms. FERRIS. I think if you look at it globally, repatriation is being emphasized. I mean, last year 1.5 million refugees went home, and 150,000 or 160,000 refugees were resettled globally. It is the last option, for many individuals it is the only source of hope. There are people who can't go back in these situations, and resettlement should be used as a tool or protection for them.

When you compare us with other countries such as Australia, Canada, Sweden, and so forth, it is true we have been the most generous and open country in the world in terms of absolute numbers. But on a per capita basis, you know, looking at the size of the population of the host country, we are number four or five.

Senator SIMPSON. Well, I admire people like you who strive on, and you do, but I think that there are realities here that will never be faced more clearly than right now, especially with regard to the support systems, dependency rates in California versus other States. These are things we are going to have to review again.

Well, since there is no one here, I will just continue, a marvelous feeling. But if my colleagues should return, they certainly will have some questions. I will try to get a question of each of you and then we will conclude.

A question for Ms. Massimino. In light of your concerns regarding a special exclusion, on what do you base your conclusion that the procedures proposed in S. 269 would be inadequate to decide asylum claims, and can you cite any evidence for us here suggesting that a specially trained INS officer would be less able than an immigration judge to determine whether, in fact, an alien has a credible, or a well-founded fear of persecution?

Ms. MASSIMINO. I would say that our concern is primarily with the standard of proof that would be required, and it is not completely spelled out in the bill, but the credible basis standard, I think, is one that we feel might be too stringent and would screen out at that early stage some genuine refugees who then would not be able to go forward through the regular immigration procedure.

When I think about trying to evaluate proposals for adjudicating at some level claims for asylum at the border, I always think about a particular situation that I faced early in my career with this particular organization where I was charged with, in effect, doing the same kind of thing. As you probably know, the Lawyers Committee operates a large pro bono asylum representation project where we place indigent refugees with volunteer lawyers, and what we do through our office is to screen those refugees for placement and we are looking for people who have a credible basis for asylum.

One evening, late, I scheduled an appointment for a woman and her four children from Pakistan, one of the very first claims that I saw, and I hadn't heard of many strong claims from that country. Actually, we had never taken a case from that country, and I talked with this woman, whose English was faltering and who was fearful of authority and very deferential. About 1½ hours into the interview, I was looking at my watch and thinking this woman doesn't have a claim and we are not going to accept her.

About 2 hours into the interview, I discovered that she, in fact, had a very strong claim based on her past political activities; that her son had been abducted and tortured because of her political beliefs. I think very often of that particular instance because I, with a very sympathetic ear, I thought, was faced with making that kind of a screening decision and if I were under more stringent circumstances where I had to do this more quickly and did not have the patience to listen with an open mind to this woman's story, I would have perhaps in that instance ordered her to be specially excluded, and I worry very much about those.

I think you have tried in your bill and some other proposals that I have seen to include provisions for basically exempting those who have strong claims, and we have set out in our testimony in more detail some additional safeguards that we think would be necessary. I think we might fruitfully work together with you to craft some provisions that would be suitable and could still serve the purpose of speeding up this process and screening out those with manifestly unfounded claims, which is in all of our interests.

Senator SIMPSON. Well, that is what we try to do here. The credible fear standard in my bill is a lesser standard which is intended only to determine whether an asylum applicant will receive a full asylum hearing. So I will work with you, but we want to be sure that due process does not require that we provide more due process to someone who is here illegally with multiple hearings, first, before an agency, then before the immigration courts, and finally before the district or circuit courts. We believe that one fair hearing might be enough for such people. That is my view.

For every story you get to tell, you see, I get to tell the other one that the American people see, and that is a 21-year-old person coming from China and saying that he is fleeing the birth policies or

the sterilization policies of China and is automatically to be here as an asylee.

Ms. MASSIMINO. Well, Senator, I would like to say that I feel that my organization and many other advocacy groups have been remiss in our failure to support you and others who seek to infuse more integrity into the refugee admissions policy, and I will pledge to you that we are planning to focus more on that this year. I think it undermines the integrity of the system and the willingness of the American people to be generous toward genuine refugees.

As you see, I cite international standards a lot in my testimony, and we rely very much on UNHCR for guidance in this area and the cornerstone of that is an objective refugee determination based on the refugee criteria without special treatment for particular nationalities, and I promise you that we are going to be better about doing that.

Senator SIMPSON. I want to tell you that is the most heartening news I have heard in a long, long, time, and I appreciate it very much and will work with you. That is very heartening to me.

Now, Mr. Nojeim, if I might ask a question or two, I gather from your testimony, rather unequivocal as it was, you suggest that the Government should never have a data base, perhaps, to keep track of citizens or other residents for any reason. It would seem to me you are saying that the Government does not even have a right to know who its citizens are.

Now, I am asking you, are you telling us that you do not believe that the U.S. Government should have information about its citizens? Already, the Government has a data base to ensure that everyone pays taxes. We hope that is true. This seems reasonable to the American public, although recently with regard to early returns and refunds, it seems a little unreasonable, apparently. Neither the tax system nor Social Security nor the Census nor any other Government data base yet has led us down this supposed slippery slope to a national I.D. card, which is the eternal specter you raise in your testimony.

Do you believe that all data bases are an invasion of privacy? Do you believe that the U.S. Government should have no right to determine who is a U.S. citizen?

Mr. NOJEIM. First, let's talk about what we agree on.

Senator SIMPSON. OK.

Mr. NOJEIM. We all agree that there should not be a national identification card that people are required to carry around, and I think we also all have to recognize that the Government already does have a lot of data on its citizens for one purpose or another.

Where we see the horse kind of at the barn door getting ready to run out is in proposals like this that require that people in the private sector be able to access the Government's data to learn about its citizens, to learn about citizens and noncitizens.

We are also concerned that the information that the Government gathers for one purpose—and we all agree that the Government gathers information for a number of purposes—will be used for something that was entirely unintended when the information was first gathered. People generally don't object at the initial gathering of the evidence. It is when it is misused, or, in their view, misused, that people begin to object. I think that the case of using Census

Bureau information to locate Japanese-Americans during World War II is one of the classic cases.

So our objection, to sum it up, is with the misuse of the data, and that once it is gathered the potential for misuse increases.

Senator SIMPSON. You hit close to home. I grew up in Cody, WY, and Hart Mountain Relocation Center was 12 miles away and I was just 12 years old when suddenly the third largest city in Wyoming rose in the sagebrush, which was the Hart Mountain Relocation Center. That left quite a permanent thing with me because they were U.S. citizens. There were some permanent resident aliens and there were some aliens, but largely the gathering went of them because of the way they looked. We didn't do that with the Germans and we didn't do it with the Italians. We did it with the Japanese. That is where I met Norm Mineta. He and I were Boy Scouts and he was behind wire and I was going to the school in Cody. So we know what that part of America was, and we know, too, that it was largely based on racism, if we get right down to the nub of it.

All we are doing throughout is to assure that whatever is presented is presented by everybody, so that you don't look to see who is foreign first or examine their documents for 20 minutes and then the white guy for 6. That is what we are up to here, so you need to know that. That is what I am up to here.

Mr. NOJEIM. We understand that, but we also understand the potential for other types of discrimination that could result from this data base. Again, that kind of discrimination comes from unintended use of the information that is gathered. When I say unintended, I mean that it is being used for something other than the purpose for which it was gathered.

I cited an example during my testimony that unscrupulous employers could use the information to find out when a person's work authorization expires, and that will have to be in the data base, so that they could make other decisions unrelated to immigration status, such as whether to lend money and whether to extend a lease. This would be the case even if the person whose work authorization was to expire imminently would routinely be able to get that authorization renewed.

Senator SIMPSON. Well, we will appreciate hearing your views. Let me ask you so we get to the final nub of it, what is your definition of a national I.D. card?

Mr. NOJEIM. In our view—

Senator SIMPSON. Your view.

Mr. NOJEIM. In the ACLU's view—

Senator SIMPSON. I see; the official line. What is the official line on what a national I.D. card is?

Mr. NOJEIM. A national I.D. card is a card or, in our view, a system of verification that can have the same effect as a card that is used to track everybody in all of their activities. I think we all agree that the nightmare from a civil liberties point of view is a card that people are required to carry for every purpose and required to produce when confronted by law enforcement officials.

In our view, that nightmare can be relieved without having a piece of plastic in one's hand because the same law enforcement officials that could require the production of a card could require a

person to recite their Social Security number and then run back to their car and run the Social Security number. So the embodiment in a card is not the crucial distinction.

Senator SIMPSON. Where was the ACLU when the President a few years ago raised a health care card on national television in front of the Congress and said everyone will carry one of these? Did you say anything?

Mr. NOJEIM. We did raise concerns at that time, yes.

Senator SIMPSON. You raised what?

Mr. NOJEIM. We raised concerns.

Senator SIMPSON. Did you call it a national I.D. card?

Mr. NOJEIM. I don't know.

Senator SIMPSON. I don't think so, but we will talk about that, too.

Now, David Simcox, I would like to ask, in your testimony you have stated at least 8,000 Border Patrol officers are needed. I would like to know how you calculate that estimate. You also cite a New York Times story that about 40,000 Chinese illegals have been entering the United States each month, which is over 400,000 a year, from Fujian Province alone. You also cite a figure of 100,000 a year for Chinese illegals.

What is the mode of entry for most Chinese illegals? What would be the most effective way to combat such entries?

Mr. SIMCOX. Well, Senator, I must say, with due repentance, that should be a year rather than a month. It is 40,000 a year. That was based on the opinions collected from Fujianese, but that is one province only, so we can assume the actual annual total to be considerably higher.

The first number was based on a survey of immigration lawyers in Eastern cities who tended to specialize in Chinese clients. The last number was vaguely attributed, the 100,000 a year, to U.S. officials, without mentioning any names.

Senator SIMPSON. You mean an anonymous source?

Mr. SIMCOX. Yes.

Senator SIMPSON. No one uses that here, especially the media—what an absurd thing. An anonymous source?

Mr. SIMCOX. I would say 40,000 to 50,000 a year would not be an unreasonable estimate.

Senator SIMPSON. And you have stated 8,000 Border Patrol officers. How do you calculate that estimate?

Mr. SIMCOX. In the years I worked for the State Department and at the center, I spent a lot of time visiting Border Patrol installations and got to know a lot of them and this was the consensus figure that came out. This would be a figure based on the experience in the late 1980's. Perhaps you could argue now for an even higher number.

Senator SIMPSON. It is interesting what is happening in New York City down in what used to be Little Italy. Broome and Mulberry is not really Little Italy. It is quite different, and there is an extraordinary number of people there whom you know are living in the most extraordinary, grotesque conditions of America. That is it; it is just going on. It gets bigger and bigger, and that is right here we are talking about.

Let me ask Mr. Stein—you did talk about the Omaha World Herald story describing the INS raid on a Nebraska meat packing plant. It said they found 100 illegal aliens, but for the first time ever no phony documents, only valid documents believed to have been obtained fraudulently. What are the implications of that one?

Mr. STEIN. The implications of that, Mr. Chairman, are that our documentary system is built on a foundation of sand and that our birth records are all, for reasons which, so far as we can determine, have nothing to do with privacy, but rather historical circumstance or coincidence—they are all kept separately by all 50 States.

So, for example, I have no way of proving my citizenship sitting here on this distinguished panel today. I would have to go down and try to find my birth record in the D.C. Department of Vital Statistics, and there is absolutely nothing that links that piece of paper easily, either manufactured by a laser printer or a certified copy obtained by anybody who might look my age.

The use of legitimate birth records fraudulently obtained and birth records fraudulently manufactured has to do with the archaic and uncoordinated way in which we maintain and verify U.S. birth. Because of the emergence of sophisticated organized criminal syndicates that assist in the procurement of these documents, the need to develop a standardized birth record system in all 50 States that can communicate with one another or some form of national birth registry to verify U.S. citizenship would seem to be the next step.

Senator SIMPSON. That is a serious problem and we are going to get into that one a lot more. Just one other point for the record. In your analysis of the need for a more reliable system to verify eligibility and receive public assistance, you make an important statement. You say the needed verification system and the system required under my bill would involve only the use of electronic means of verifying information that already under current law must be provided in the same circumstances. Would you explain that point more fully to this committee?

Mr. STEIN. There is nothing about the system which you envision in your bill which requires the additional use of information or the additional provision of information by employees or applications for benefits which is not already required by law in precisely the same circumstances. We are simply talking about electronically verifying information already required to be provided by law.

There is today nothing which would prevent an employer, with the employee's permission, from calling up the Immigration Service to verify if there is a work expiration date, for example. Temporarily work-authorized aliens already get Social Security cards that have expiration notations on them. There is no new accessing of information implied by the system that you are talking about, and with all due respect to the ACLU, it is difficult to see where the privacy issues in your proposal lie.

Senator SIMPSON. Ms. Muñoz, I have a question I would submit for Senator Feinstein and I will do that in oral fashion. You suggest eliminating the visa waiver program which allows visitors from certain countries with low overstaying rates, of course, to come to the United States without visas, and there are many countries involved now—26 or something.

Is something short of elimination that would also help to reduce these overstays? Are the overstayers of countries that now qualify actually high or increasing? What is that situation?

Ms. MUÑOZ. Yes, and I believe in my testimony we ask that the visa waiver program be reconsidered, not necessarily eliminated. I think that there is a lot more we need to know about it. My understanding, at least of the original program, is that it is not necessarily rates of visa overstayers, but visa denials, which is a different phenomenon, which determines whether a country participates, and that the extension of the visa waiver program which was enacted last year primarily benefited Portugal and Ireland. I know that there are identifiable communities of Portuguese and Irish undocumented immigrants in the United States. Presumably, they didn't enter through Tijuana.

So in our testimony we list other potential methods of dealing with the visa overstay problem. I listed them both in my oral statement and they are in the written statement. Penalties for failure to depart, standardization of consular procedures, and automation at consulates, for example, I think, again, are things which should be happening anyway, are relatively easily done, and may contribute a great deal to getting at this problem.

Senator SIMPSON. I was going to make a comment on an item last week out on home ground there in Wyoming. You know what I am going to ask; I can see you smiling. I do want to check that with you because I don't understand that. I mean, if we are going to do this business together—and I love to get into it with Raul Yzaguirre. I mean, we whack on each other, and he invites me to his national conventions and while they are whooping and hollering and saying, sit down, he says, no, listen to this rascal. That is good, and I always have him testify here.

The largest paper in Wyoming, in interviewing you—and this is a paper that loves to dong on me. I mean, I am an art form in their pages. I am exhibit A. I am the evilest poop that every strode the Earth. I told them years ago I wouldn't really take an endorsement from them if it were forced upon me. So it is a cordial relationship.

The publisher happens to be of the Flat Earth society because he still believes that we should have an open border. Hear that one. I mean, the publisher of this paper, Tom Howard, believes we should have an open border. So I failed in any work of trying to influence him on this issue. Many of the people who work for the paper feel that that is a very humane thing to do. Six percent of the American people have joined them in that thought. That is quite a sturdy group.

But, anyway, you were the source that stated that I had long supported a national I.D. card, but had recently moderated my views. I think you know me well enough to know that I represent a State of pretty rugged people, full of opinionated men and women, classic rugged individualists. Their major demand of Government is that it stay off their backs. The idea that American citizens would be forced to carry around some kind of national I.D. card in their own country is anathema to such folks, as it is to me. That is why I have always opposed the idea. It is in everything I have done.

I don't know if that reporter is here today. I never called that reporter to show up, but they can sure read the testimony here because there it is in my 1982 bill, in the 1986 bill, time after time, saying the committee is most emphatically not requiring or permitting the development of an internal passport or a national I.D. card. Personal information will not be used. Systems shall not be used for law enforcement purposes. It shall not be carried on one's person.

I would like to ask you why you did that.

Ms. MUÑOZ. Well, Senator, you and NCLR and Raul and I have had a difference on this particular issue for a long time. In our view, and this is articulated in our testimony, the system that you propose in this legislation and the systems that you have talked about and proposed in the past lead to a card inevitably.

There has been a lot of discussion today about how an individual proves that the Social Security number that they walk into that employer with actually belongs to them. Even the Commission acknowledges in the length of its supportive material to its report that a card is probably the most effective way to get there.

The other alternatives are to include personal data, like mother's maiden name, in the data base or for the U.S. Government to issue every worker in this country a PIN number and expect that those workers will remember that number when the time comes to work in a new job. Neither of those are workable. We think you don't have to recommend or stipulate a card for a card to be the inevitable result of such a policy. That is part of the reason that we object to it.

So I certainly apologize if I have misstated your direct position, but we think this is where this proposal gets us, and it is one of the reasons we object.

Senator SIMPSON. Well, I appreciate that remark there because I have never, ever supported a national I.D. card. The things you described are a great flight across chasms of logic to get where you just got, and if that is the kind of misrepresentation of my work, that is not conducive to the kind of reasoned and responsible debate that we ought to have, which I have always tried to do and which I hope you would strive to do, too.

I would hope that that kind of irresponsible and reckless commentary would not continue. If it does, it certainly lessens my credibility for the Council of La Raza. So I will put that right out there right now.

Now, I have a question. You have criticized the public assistance policies. First of all, this bill does not envision public charge deportation for refugees. Refugees, in fact, are exempt from public charge exclusion and deportation. In addition, our laws require that the United States provide significant public assistance for these individuals, but part of the problem that has always confronted us, and you will see it in the pages of the major newspapers—they start using the word "immigrant" and by the time they are finished they have used the word "refugee," or they start with the word "refugee" or they interline and splice in words like "immigrants" and "refugees" with no distinction.

Now, the American people do not favor immigration policies which will result in immigrants who will not be productively in-

volved in our economy, and who also will use substantial public assistance. That is pretty true; that is what happened with proposition 187. Restrictions barring the admission of immigrants, real immigrants, who are likely to become, quote, "public charge" date back to the earliest parts of our immigration law. I think it was 1888 or 1886, so this isn't some new thing.

Why, then, should anyone be allowed to sponsor the immigration of a parent and then place that person on public assistance? No immigrant sponsor should be able to turn to the SSI Program for assistance unless the family's income is inadequate to meet the needs of its members. In such a case, the deeming provisions of this bill would allow an immigrant to receive Federal benefits.

So my question is why should the American people provide permanent income support to immigrants, not refugees, who have not contributed to our country enough to qualify for Social Security or Medicare? This is directly contrary to the self-sufficiency goals of our public charge provisions. What are your thoughts on that matter?

Ms. MUÑOZ. We are not arguing that the United States ought to bring in immigrants who are likely to become reliant on public assistance. In fact, our sense is that the public charge provisions which prevent entry in the first place work rather well. It is the single most used reason to deny visas for people seeking to enter the United States as immigrants.

The welfare use rates that Michael Fix cited, I think, suggest for working-age immigrants that they work very well, that they tend to use benefits less than the native population. The exception does include elderly immigrants. These are folks who are the parents of U.S. citizens who very often have been in the United States for a long time who do not turn to the SSI or Medicaid programs until they have been in the United States even longer than the deeming period, many of them.

That is because they are elderly. They have the misfortune of occasionally needing medical assistance, and needed it more than the general population because of their age. From the point of view of immigrant communities, what this suggests is that U.S. citizens who have reunited with their parents and who are working in the country and contributing to the country mightily will not be able to even get basic safety net services—or their parents will not be able to get basic safety net services because they are foreign-born.

We think there is some reason in the system; there is some reason in the deeming procedures. We think that they make sense. We think that it may make sense to tighten up enforceability of the sponsorship agreement because it is not enforced right now. We don't disagree with those principles, but we think that deeming until citizenship is excessive.

I would like to echo what Michael Fix mentioned in the earlier panel that I would hate to see eligibility for benefits to become a primary incentive for citizenship for people who are in need or people who have had disabling accidents after they have arrived in the United States. Under current law, the citizenship choice is something that people make because they want to proclaim their allegiance to the United States and because they want to throw their future in with the rest of ours, and I would hate to see a connection

to benefits be attached to that decision. I think it very much cheapens the process.

Senator SIMPSON. How is that again?

Ms. MUÑOZ. If you deem until citizenship, essentially what you are saying for folks who may need—

Senator SIMPSON. I don't think we need—go ahead.

Ms. MUÑOZ. Folks who may need SSI in order to have access to medical care because they are elderly—that may become a primary incentive for people to undertake naturalization. INS data show that people who enter later in life are less likely to naturalize than folks who come when they are younger, and we think that has an enormous amount to do with fear of the naturalization process, fear of the exam, fear of the INS. Some of these people haven't had terrific experiences with the INS.

So they are the group least likely to naturalize, and I would hope that we don't create a policy which links the decision to naturalize for this group of elderly parents of U.S. citizens to their need for medical care.

Senator SIMPSON. I hear that, but remember a legal elderly immigrant can get into Medicare with very little capital effort, and an illegal can't get in at all.

Ms. MUÑOZ. That is right. Although I understand there are some barriers to folks getting into the Medicare process, it is not straightforward and simple from what I understand.

Senator SIMPSON. We have a serious problem there we will probably get to in the hearings where we have the SSI and the disability which is being abused seriously. That is just shooting up off the chart. I received some information the other day that one of the applications for SSI disability had come from overseas, and that is absurd. So I get to deal with the absurd.

I want to thank you very much for coming, and look forward to working with each and every one of you because I think you all know now, as I do, that this is it. We either get in and play right up front this trip or when we go to the floor—if we can go to the floor with something that can come out of this committee by unanimous vote, or close, or 15 to—however many there are of us—we can do something. But if we come out of here with a bill 8 to 7 and then get to the floor, after those of us who have paid close attention haven't been able to explain it any better than that, when it gets to the floor the amendments will curl your hair and what is left of mine.

Now, that is what is out there this time. It really is so, and I think we all know it in our hearts. Whether it is limits, whether it is restrictions, whether it is disgust, whatever it is, it is all out there this trip. It has never been there like this ever, and this trip, if we do it in the Senate, it won't be where the groups just move their tents over to the House and start dealing with the staff of the House of Representatives saying, well, these guys are out to lunch over there in the Senate again.

But thank God we are here, finally, home again. Munching and chewing the fat and giggling—that is all over, too, because you are going to find some kind of slider that will get into conference and might get wound up in 5 days instead of 5 months. That is what

is out there, and you know that. You are all here and you are all players, and that is why we have to do it right.

So I want to thank you and I want to thank the staff. My old friend, Dick Day, whom I lured here from Cody, WY—just come on out for a year, Dick, just a year. It is just an issue where I am going to get torn to pieces and I need an old pal here with me. His wife, Judy, is here. There is the lady right there. You should meet Judy Day, right there. I don't usually do that, but there she is, a wonderful woman herself.

Thanks to Chip Wood, who is back with us for this work, and, of course, John Knepper and Margie McReynolds. We have not quite finished the composition of the staff until I talk with Senator Hatch. I intend to wrench from him a little more money. But Maureen McCafferty, too, indeed.

I look forward to working with you. Thank you very much for your patience.

The hearing is adjourned.

[Whereupon, at 5:01 p.m., the committee was adjourned.]

## APPENDIX

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### QUESTIONS AND ANSWERS

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#### RESPONSE OF ATTORNEY GENERAL RENO TO QUESTIONS SUBMITTED BY SENATOR SIMPSON

1. According to a recent survey by the Library of Congress, asylum adjudication procedures are being reviewed and revised in country after country, with the goal of reducing the number of asylum seekers. Among the objectives: to shorten and streamline such procedures for applicants arriving with no documents or with fraudulent documents.

How successful have such revisions been in reducing the flow of asylum applicants?

Many countries which receive large numbers of asylum seekers have undertaken revisions to their processes to reduce the number of abusive claimants. The goal of these countries is to inform potential asylum seekers that the process is limited to legitimate claimants. Various measures have been undertaken, for example, imposing carrier sanctions for transporting improperly documented aliens into the country; placing immigration officials in the country of origin or transit; as well as post-entry measures to handle undocumented asylum seekers.

Countries which have implemented carrier sanctions generally have witnessed a decrease in the number of undocumented asylum applicants applying at airports.

Canada, for example, has instituted pre-flight clearance at airports in countries of origin or in transit countries. These procedures involve investigating the details of the claim prior to departure.

Some countries have implemented "safe country of origin" practices which establish official lists of countries which are considered to not produce asylum seekers (Switzerland, Germany and Finland).

Some countries also have implemented detention requirements for undocumented asylum seekers (Switzerland, the Netherlands, Australia, and Belgium).

Many of these procedures have recently been instituted so there is little data available to verify the effectiveness of these procedures on decreasing the levels of abusive asylum claims. It will be interesting to monitor the effectiveness of these programs.

2. Have recent revisions in U.S. asylum regulations affected the flow of undocumented asylum seekers?

Due to increases in the number of asylum applications filed with the INS and to the growing misuse of the asylum program by applicants without legitimate asylum claims, the INS and the Department of Justice (EOIR) developed a plan for comprehensive asylum reform, which was promulgated through the rule-making process (January 1995). The goal of reform is to provide an asylum system which integrates INS/EOIR processing and can keep current with new asylum receipts. The main provisions of asylum reform are as follows:

The Asylum Corps will promptly approve meritorious claims within 60 days of filing;

Refer asylum cases which are not granted by the Asylum Officer Corps to the Executive Office for Immigration Review for completion during deportation or exclusion proceedings;

Decouple work authorization from the asylum process, thereby eliminating the incentive to file meritless asylum claims as a means of obtaining work authorization; and

Provide for the expeditious removal of failed asylum seekers who are in the United States illegally, after completion of their asylum processing, and including any appeals before the Board of Immigration Appeals.

Since implementation of the new regulations has only recently occurred, it is too early to determine whether the regulations have affected the level of new asylum filings. However, the number of filings for March 1995 was 8,496 compared to March 1994 which was 12,791. In the first 6 months of FY 1995 there were 73,450 asylum applications filed, while during the same period for FY 1994 there were 74,350. The Service expects that abusive filings will decrease as the changes are fully implemented.

3. The Administration proposes to provide an extra \$370 million in impact aid to States with a large number of illegal aliens. I am concerned that these Medicaid grants and Immigrant Education grants will become another growing and permanent entitlement program. Please comment on this problem.

In its 1996 budget proposal, the Administration has requested \$550 million in assistance to states to offset costs associated with illegal immigrants, including the costs of incarcerating criminal aliens, and providing illegal immigrants medical services and education. The Administration's FY 1996 request is an increase of \$383 million over FY 1995 appropriations.

Within the \$550 million request for FY 1996, \$100 million is requested for the Emergency Immigrant Education Program authorized by Title VII, Part C of the Elementary and Secondary Education Act of 1965. This is a \$50 million increase over the FY 1995 appropriation. The Emergency Immigrant Education program provides Federal assistance to local educational agencies (LEAs) that have large numbers of recently arrived immigrant students.

Under the program, States submit applications to the Secretary of Education based on statutory criteria. The Department makes grants to State educational agencies (SEAs), which then make subgrants to eligible LEAs within the State based on the number of eligible immigrant students in the district. Eligible LEAs are those that enroll at least 500 recent immigrant students or those in which immigrant student represent at least 3 percent of the total enrollment. Immigrant students may only be counted if they have been attending U.S. schools for less than three complete academic years.

The Omnibus Budget Reconciliation Act of 1986 clarified the entitlement of undocumented persons to Medicaid services by requiring States only to provide emergency medical care. As is the case for other Medicaid services, the Federal government shares the cost by providing matching funds to the States of between 50 percent and 78 percent. The President's budget proposes a new discretionary grant to help States with the largest burden of caring for undocumented persons pay some of the State share of Medicaid emergency costs. Nothing requires the Federal government to pay any of the State share. However, we are aware of the financial impact of such costs on the States and we believe that, as a matter of policy, it is appropriate for us to provide additional assistance. The President's proposal would not change the entitlement of individuals to Medicaid services. In addition, the discretionary grant mechanism proposed to channel the additional funds to States is intended to make clear to them that this additional assistance does not constitute a change in State level entitlement of funds either.

The Administration has made the identification and removal of criminal aliens a high priority. We are striving towards the removal of all criminal aliens and thus, the elimination of the need for state incarceration cost assistance. In FY 1993, INS deported 20,138 criminal aliens, of whom approximately 4,400 were processed through the Institutional Hearing Program (IHP). In FY 1994, INS deported 21,992 alien felons, of whom approximately 6,000 completed hearings under the IHP. With the resources appropriated by Congress for FY 1995 and the expediting provisions and resources authorized by the Violent Crime Control and Law Enforcement Act of 1994, we will be deporting more criminal aliens this year. With our innovations and the \$178 million budget enhancement requested for FY 1996, criminal alien removals should reach 58,200, and the deportation of criminal and non-criminal aliens should triple from 37,000 in 1993 to more than 110,000 in FY 1996. In addition, we have requested \$300 million to reimburse states for the incarceration costs of illegal alien felons. In handling the reimbursement of costs associated with the incarceration of criminal aliens, the Department of Justice is developing a verification process that will enable it to ensure that criminal aliens held in state facilities are identified, and targeted for deportation.

This Administration is moving on several fronts to maximize the number of criminal aliens deported. We have asked and received from Congress additional personnel and resources to expand the IHP. We have negotiated with state governments to work more effectively and efficiently in state correctional facilities. We have revised

how we assign and use our investigative personnel. We are asking for additional investigative, detention and deportation resources in FY 1996. We are developing a streamlined, fair, and effective procedure to expedite removal of deportable aliens. We have instituted a national detention and removal plan to expedite the removal of criminal and other deportable aliens.

4. Please describe the implementation of the U.S./Cuba accord of last fall. How are the Cubans selected? How many Cubans have been paroled into the U.S. so far? How many total parolees are likely in the first 12 months of the program? Which of the usual grounds of exclusion are not being applied to the Cubans being admitted under this "special program".

On September 9, 1994, the United States and Cuba signed a migration accord that will permit a minimum of 20,000 Cubans a year to come to the United States. In response, immigrant visa issuance in Havana has been accelerated. In addition, the Fiscal Year 1995 refugee admissions ceiling has been increased to 7,000 and the criteria for interview broadened. To further expand the movement of family members under these programs, public interest parole may be offered to the unmarried sons and daughters of Cubans issued immigrant visas or granted refugee status, as well as to family members who reside in the same household and are part of the same economic unit.

As of April 21, 12,300 Cubans had been approved for travel in these categories, all of which count against the migration goal of 20,000. The approvals are broken down as follows: 2,957 preference immigrant visas; 6,901 refugees, of which 4,485 now are travel ready; and 2,380 paroled family members of immigrants or refugees.

On November 9, 1994, the United States Government announced an additional measure, the Special Cuban Migration Program (SCMP). The program gives all Cubans in Cuba, including those with only distant relatives or no direct family ties to the United States, the opportunity to apply for legal migration. In order to be considered, any Cuban at least 18 years of age was required to mail an entry to the United States Interests Section during the registration period of November 15 to December 31.

In late February, an INS contractor conducted a statistically valid, random ranking of the almost 190,000 entries in the data base. In mid-March, the first randomly selected applicants were mailed notification packets containing eligibility instructions and application forms. Interviews began at the United States Interests Section (USINT) in early April. Applicants are required to establish that they are admissible to the United States as immigrants; all of the normal exclusion grounds are being applied. To satisfy the public charge requirement, applicants are asked to submit Affidavits of Support and are assessed on their ability to become self-sufficient quickly in the United States. Applicants also must be able to answer affirmatively to at least two of five eligibility questions (regarding education, work experience, job skills, relatives in the United States, and prior manifestation of interest in immigrating). 62 persons authorized for parole under SCMP were approved as of April 21.

Although we cannot predict the exact number of SCMP applicants who will be selected, interviewed, and approved for parole, a sufficient number will be processed to ensure a legal migration level of at least 20,000. Our best estimate is that approximately 7,000 SCMP paroles will be issued before September 8.

In addition, we have made an exceptional, one-time parole offer to visa beneficiaries on the immigrant visa waiting list as of September 9 whose visas will not become current this year. 3,810 such paroles have been granted. Neither these paroles nor the 905 immediate relative immigrant visas issued count against the migration goal of 20,000.

5. S. 269's proposed verification system would also be used to verify eligibility for Government-funded public assistance. What is the Administration's view of this proposal?

The Administration is actively pursuing ways to improve verification systems for both employment authorization and public benefits eligibility. Currently, INS uses the same database for both purposes—verification for benefits under the SAVE system and for employment under the TVS pilot. The Administration's pilot programs will test several ways to improve these systems and, upon completion and evaluation, the Administration will make recommendations to Congress.

6. The INS Form I-551—the immigrant "green card"—does not indicate whether a sponsor affidavit of support has been submitted for the immigrant. This makes it more difficult for public assistance agencies to determine whether the sponsor's income should be "deemed" to be part of the immigrant's income if the immigrant applies for benefits. Is INS considering adding this information to the card? If no, why not? Is there a better way to enable such agencies to obtain this information?

The INS is exploring how information on sponsorship can best be made available to protect the privacy of permanent residents but still provide this crucial information to benefit agencies who need it. The INS currently maintains information on affidavits of support (sponsorship) in its paper alien file system, but does not include any indication of sponsorship in its automated records.

Currently, benefit agencies can often determine by the class of admission and date of entry on the "green card" whether an alien is likely to have been sponsored and whether they would still be subject to the deeming provisions. If an alien denies being sponsored, but a case worker suspects otherwise, he or she can check with INS through the SAVE secondary verification system.

An alternative to putting the information on the I-551, which would openly identify such aliens as having been unable to pass the public charge provisions on their own, would be to put the information in the data base used to verify eligibility for benefits. We are currently exploring the cost effectiveness of adding a field indicating sponsorship to our automated records system for immigrants admitted in the future. This would require coordinating with the Department of State to provide this information on persons entering with immigrant visas as well as collecting it from INS adjustment of status cases.

#### RESPONSE OF ATTORNEY GENERAL RENO TO QUESTIONS SUBMITTED BY SENATOR LEAHY

1. How do the centralization and system-wide interdependence of the so-called "Centers of Excellence" plan comport with principles for the National Performance Review?

Re-engineering how agencies deliver services through the most effective organizational structure is a prominent theme of Vice President Gore's Report of the National Performance Review (NPR). The Report states:

Effective, entrepreneurial governments cast aside red tape, shifting from systems in which people are accountable for following rules to systems in which they are accountable for achieving results. \* \* \* Effective, entrepreneurial governments insist on customer satisfaction and (they) transform their cultures by decentralizing authority. They empower those who work on the front lines to make more of their own problems. (They) constantly find ways to make government work better and cost less—re-engineering how they do their work and reexamine programs, and processes. They abandon the obsolete, eliminate duplication \* \* \* and embrace advanced technologies to cut costs. (pp. 6-7)

To that end, part of INS' streamlining plan is to create specialized administrative centers and consolidate transactional and operational processes. Currently, INS has five administrative centers performing finance, personnel, facilities, fleet, files and forms, debt collection and other administrative functions. With specialized centers performing these functions, INS would eliminate duplication, provide uniformity, decentralize authority, and lower the cost of doing business as efficiency and productivity increase.

2. Does the basic reorganization being proposed as the so-called "Centers of Excellence" plan amount to 302 administrative positions being transferred to other offices with no savings from the elimination of any such positions?

No. INS believes that there could be a reduced number of supervisors under the new proposal, but that number has not been determined yet. Savings would be generated from reduced rental costs and the shifting of positions from an area that generates higher salary costs to a lower salary cost area. In addition, administrative support staff has remained flat while the INS has been growing, although a JMD review indicated that INS needs at least an additional 217 support positions.

3. What plans does INS have for "cross-servicing" other aspects or functions of the Department of Justice through these so-called "Centers for Excellence"?

At present, all of INS' plans and energies are focusing on accomplishing its immigration enforcement and service missions. However, in theory, creating Specialized Administrative centers could position INS for cross servicing other agencies, in the long-term, as the Centers became increasingly proficient and automated through specialization.

4. How much has the development of the so-called "Centers of Excellence" plan cost, taking into account that cost of personnel and expenses? Please provide a detailed breakdown and explanation of such costs including activities, dates, participants and locations involved.

The task force responsible for the draft report began working on this project on a full time basis in June 1994. Their work was completed in mid-October 1994. The task force was composed of three employees—John Neach (GM 14), Sandra Piira (GM 14), and Ann Simeone (GM 14). The approximate salary cost for each of these employees is \$65,000 per year (salary is not in published personnel listing). In addition to their salary, about \$10,000 was expended for travel to various locations to gather information.

5. How much will the so-called "Centers of Excellence" plan cost to implement, taking into account the costs of personnel, expenses, transition and the possible disruption of administrative support, loss of institutional memory and talent? Please provide a detailed breakdown and explanation of such costs by administrative function and year.

INS estimates total projected costs over a 5-year period at \$8.95M. During the first and second year of implementation of this proposal, INS has anticipated total estimated costs would be \$8.5M for relocations, retraining, transfer of furniture and equipment, renovation of space, separations, and other miscellaneous expenses. A detailed costs/savings chart is attached.

6. I have asked for, but not been provided with, the basis for INS' estimate that it could save \$1.95M in the second year of this administrative reorganization and could save \$3.9M in each succeeding year. Please provide a detailed breakdown and explanation of such estimated savings by administrative function and year.

INS projects that the Office of Management would realize a \$3.9M savings beginning in year 4 after implementation of the consolidation of functions. During the second year of implementation, the bulk of the expenses would be incurred, but as the cost of doing business was lowered, INS projects that \$1.95M would be saved, based on:

Lower rental space costs.

Fewer Office of Management employees, as some of the affected employees choose to move to other programs within INS or outplace to other agencies, rather than transfer to new locations or be retrained.

More and improved automation of transactional processes.

Attached is a chart used to calculate the estimated costs and savings associated with the consolidation proposal. Automation-related costs and savings are not available for calculating these estimates.

	Bur	Twin Cities	Dallas	Laguna	HQ	Total
<b>Estimated Cost/Savings:</b>						
Avg cost/sq ft .....	\$19.13	\$17.55	\$19.73	\$23.63	\$24.99	.....
Ave sq ft/person .....	258	270	242	258	255	.....
Allocated PS&B for FY						
95 .....	5,761,000	4,418,000	7,067,000	7,721,000	46,506,000	.....
Avg sal/benefits .....	40,570	43,743	46,801	44,374	68,291	.....
Net moves .....	-22	111	191	-115	-165	.....
Savings./costs/sal/bene-						
fits .....	(892,540)	4,855,473	8,938,991	(5,103,010)	(11,268,015)	(3,469,101)
Rent .....	(108,582)	525,974	911,960	(701,102)	(1,051,454)	(423,205)

7. Given the increasingly important tasks and programs that make up INS' mission, do you believe that this is the appropriate time to be simultaneously reorganizing its administrative services?

The INS agrees that we are now facing one of our biggest challenges—hiring an additional 5,000 employees this fiscal year. Given the current shortages in administrative staffing, we are seriously concerned about providing quality and timely service in allocating and deploying these critical resources. Accordingly, we are convening a task force to address immediate administrative support areas of concern, while we move toward creating Specialized Administrative Centers at a slower pace.

#### QUESTION ON THE LAW ENFORCEMENT SUPPORT CENTER

1. You mentioned the Law Enforcement Support Center in your testimony. How are plans progressing to expand the LESC's program to include more of the country so that it can provide service and information to more jurisdictions?

The Law Enforcement Support Center (LESC) demonstration project is on track. The INS received a preliminary, 6-month evaluation of LESC operations, prepared by the Institute of Intergovernmental Research under grant from the Department of Justice's Bureau of Justice Assistance. The report concludes with a recommendation for the continued operation and expansion of Center services statewide. A full-year evaluation will also be conducted in September, 1995.

The Law Enforcement Support Center experienced early, technical difficulties which we have since overcome. INS intends to expand LESC services as rapidly as possible to the rest of the state of Arizona, and then to other areas. Decisions concerning expansion will be made following assessment of the full-year evaluation.

#### QUESTIONS ON S. 390

1. The Administration's proposed counterterrorism bill (S. 390) would allow courts to deport legal aliens (and to send to jail both aliens and citizens) based on their support for the legal activities of organizations a subgroup of which engages in terrorist activities. How do you square this provision with *Elbrandt v. Russell*, 384 U.S. 11 (1966), in which the Supreme Court stated that a blanket prohibition of association with a group having both legal and illegal aims, without a showing of specific intent to further the unlawful aims of the group, is an unconstitutional infringement on the freedom of association protected by the First Amendment?

The question misstates the content of the provisions of the bill in question. The bill does not prohibit a person's mere support of the legal activities of an organization having a subgroup that engages in terrorist activities. Rather, it prohibits certain nonexempt fundraising or funding activities on behalf of foreign terrorist organizations designated by the President.

The provisions of S. 390 are readily distinguishable from the state loyalty oath law struck down in *Elbrandt v. Russell* in several crucial respects. The law at issue in *Elbrandt* imposed penalties for mere membership in an organization, without more. 384 U.S. at 16. S. 390 does not punish or prohibit mere membership; it applies only to prohibited activities undertaken in support of a terrorist organization. Also, as stated in the question, the law at issue in *Elbrandt* imposed "a blanket prohibition of association." See 384 U.S. at 15. The proposed bill does not impose a "blanket prohibition of association." On the contrary, it provides for a license to engage in fundraising or the provision of funds even for designated terrorist organizations where the funds are to be used for legitimate, non-terrorist activities (see subsection (e) of the bill). The Court in *Elbrandt* was concerned that "there [was] apparently no machinery provided for getting clearance in advance" under the law in question there. 384 U.S. at 17 (footnote omitted). Under S. 390, however, the names of groups whose fundraising activities are to be limited must be published in the Federal Register, and if a group is so identified, the licensing provisions offer a means "for getting clearance in advance" in order to engage in fundraising and funding activities.

2. Why is the Administration proposing to rewrite the definition of "engage in terrorism activity" to include support for legal activities? What national interest is served by deporting persons who support peaceful methods of addressing political and social problems?

In recent years, a number of international terrorist groups have successfully developed networks in the United States which they use to support their terrorist activities. While that support takes a variety of forms, the most common is the solicitation of funding. In turn, that funding puts these groups in a more effective position to carry out terrorist acts, many of which victimize Americans traveling overseas or otherwise impact on vital U.S. interest.

It is not possible to address this problem simply by precluding contributions specifically designated for support of terrorist activity. Virtually all terrorist groups engage in some non-terrorist functions through which they can easily funnel all of the funds which they solicit. Since money is fungible, once acquired those funds can easily be diverted to terrorist uses. Hence, unless allocated to specific legitimate activities in a verifiable manner, cash given to a terrorist organization provides material support for the organization's terrorist activities, and consequently, constitutes "engaging in terrorism activity" as defined under the Immigration and Nationality Act.

Groups that engage in terrorism typically do so in an effort to further their political objectives. Absent verifiable accounting mechanisms, it is artificial to suggest that the political objectives of such groups can be segmented such that legal activities are separate from terrorist activities. If an organization's political objectives are fulfilled in part through terrorism, the United States has a legitimate and important interest in precluding funding of any aspect of that terrorist agenda.

In contrast, the objective of supporting humanitarian programs that address social problems is clearly a laudable one. Under the proposed statute, aliens would not be precluded from fulfilling that objective. There are numerous humanitarian organizations available which do not also engage in terrorism. The Administration's proposal benefits not only the U.S. interest in preventing terrorism, but also the alien contributors by ensuring that their funds will be used for the intended purpose and not for terrorist violence.

3. If enacted, what impact, if any, would the "alien terrorist removal" provisions have on the pending cases of the "LA Eight?"

We cannot comment on pending cases.

4. How does the Administration justify the secret evidence procedures in the face of court decisions, from *Kwong Hai Chew v. Colding*, 344 U.S. 590 (1953) to *Rafeedie v. INS*, 795 F. Supp. 13 (D.D.C. 1992), holding that the government cannot use secret evidence in immigration proceedings?

The Administration believes the procedures in sections 201 are constitutionally justifiable for a number of reasons: (1) Congress has plenary authority over immigration; (2) aliens who fail to obtain naturalization have a limited constitutional status; (3) deportation proceedings are civil in nature; (4) the confrontation right in deportation proceedings is a statutory, not constitutional right; (5) the sovereign interests at stake in cases subject to section 201's "no summary" exception are at their zenith; (6) section 201 process is buttressed by procedural protections not found in conventional deportation proceedings, including trial by independent Article III judges and only after high-level authorization in the Department of Justice. Neither *Kwong Hai Chew v. Colding* nor the district court opinion in *Rafeedie v. INS* hold, as a general proposition, that the government cannot use undisclosed classified evidence in immigration proceedings. These considerations are discussed at length below.

First, the Supreme Court has repeatedly characterized congressional authority over immigration as plenary and has upheld various immigration statutes against constitutional attack:

Policies pertaining to the entry of aliens and their right to remain here are peculiarly concerned with the political conduct of government. . . . [T]hat the formulation of these policies is entrusted exclusively to Congress has become about as firmly embedded in the legislative and judicial tissues or our body politic as any aspect of our government.

*Galvan v. Press*, 347 U.S. 522, 531, (1954). In *Mathews v. Diaz*, 426 U.S. 67, 79-80 (1976), the Court observed that:

In the exercise of its broad power over naturalization and immigration, Congress regularly makes rules that would be unacceptable if applied to citizens. The exclusion of aliens and the reservation of the power to deport have no permissible counterpart in the Federal Government's power to regulate the conduct of its own citizenry.

In *Harisiades v. Shaughnessy*, 342 U.S. 580 (1952), the Court held that:

any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.

See also *Kleindienst v. Mandel*, 408 U.S. 753, 765-767 (1972); *Fong Yue Ting v. United States*, 149 U.S. 698, 711-713 (1893).

Second, in *Carlson v. Landon*, 342 U.S. 524, 534 (1952), the Court stated that: "[S]o long \* \* \* as aliens fail to obtain and maintain citizenship by naturalization, they remain subject to the plenary power of Congress to expel them under the sovereign right to determine what non-citizens shall be permitted to remain within our borders." The Court has since held that aliens in the United States gain procedural and other protections as they develop their relationship to this society, and to citizenship by naturalization in particular. See *Landon v. Plasencia*, 459 U.S. 21 (1982).

Third, "a deportation proceeding is a "purely civil action \* \* \* intended to provide a streamlined determination of eligibility to remain in this country, nothing more." *INS v. Lopez-Mendoza*, 468 U.S. 1032, 1038-1039 (1984):

Consistent with the civil nature of the proceeding, various protections that apply in the context of a criminal trial do not apply in a deportation hearing. The respondent must be given "a reasonable opportunity to be present at [the] proceeding," but if the respondent fails to avail himself of that opportunity the hearing may proceed in his absence. In many deportation cases the INS must show only identity and alienage; the burden then shifts to the respondent to prove the time, place, and manner of his entry. A decision of deportability need be based only on "reasonable, substantial, and probative evidence." The BIA for its part has required only "clear, unequivocal, and convincing" evidence of the respondent's deportability, not

proof beyond a reasonable doubt. The Courts of Appeals have held, for example that the absence of Miranda warnings does not render an otherwise voluntary statement by the respondent inadmissible in a deportation case. \* \* \* [The] Ex Post Facto Clause has no application to deportation. [The] Eighth Amendment does not require bail to be granted in certain deportation cases. [I]nvoluntary confessions [are] admissible at deportation hearing[s].

*Id.* (citations omitted).<sup>1</sup>

Fourth, the confrontation right accorded an alien in a deportation proceeding by the Immigration and Nationality Act, that of a "reasonable opportunity" to examine the evidence against him, is not based on the Sixth Amendment. 8 U.S.C. § 1252(b)(3). No court has defined the "reasonable opportunity" minimum. See *Batanic v. INS*, 12 F. 3d 662, 666-667 (7th Cir. 1993) ("The problem is with the specifics; the [Supreme] Court never has enumerated the requirements of due process in a deportation hearing.").

Fifth, the Due Process balancing test set forth in the Supreme Court's decisions in *Mathews v. Eldridge*, 424 U.S. 319, 334-335 (1976), and *Landon v. Plasencia*, 459 U.S. 21 (1982), requires that substantial weight be accorded the sovereign interests implicated by the use of a particular process. In *Mathews*, the Court observed that its due process decisions "underscore the truism that [due] process, unlike some legal rules, is not a technical conception with a fixed content unrelated to time, place and circumstances." 434 U.S. 319, 334 (1976) (citations omitted). To the contrary, "[due] process is flexible and calls for such procedural protections as the particular situation demands." *Id.* (citations omitted). In *Landon*, the Court emphasized the place of the sovereign interests in the analysis:

The constitutional sufficiency of procedures provided in any situation, of course, varies with the circumstances. In evaluating the procedures in any case, the courts must consider that interest at stake for the individual, the risk of an erroneous deprivation of the interest through the procedures used as well as the probable value of additional or different safeguards, and the interest of the government in using the current procedures. \* \* \* The Government's interest in efficient administration of the immigration laws at the border \* \* \* is weighty.

Further, it must weight heavily in the balance that control over matters of immigration is a sovereign prerogative, largely within the control of an Executive and the Legislature.

(citations omitted). In the class of cases covered by section 201, the sovereign interests are at their zenith. Courts conducting this inquiry "must evaluate the particular circumstances and determine what procedures would satisfy the minimum requirements of due process \* \* \*" 459 U.S. at 35 (emphasis added).

In *INS v. Lopez-Mendoza*, the Court conducted a similar balancing inquiry in holding the Fourth Amendment exclusionary rule generally inapplicable to deportation proceedings.<sup>2</sup> Evidence obtained in violation of the Fourth Amendment remains fully admissible in a deportation proceeding.

Sixth, in marked contrast to conventional deportation proceedings, the Section 201 process is conducted by independent Article III judges, and only after high level authorization in the Department of Justice.

The two court decisions identified by the Committee, *Kwong Hai Chew v. Colding*, 344 U.S. 590 (1953), and *Rafeedie v. INS*, 795 F. Supp. 13 (D.D.C. 1992), are not inconsistent with the foregoing. In *Chew* and another case decided three weeks

<sup>1</sup> Nearly a century ago, the Supreme Court characterized deportation proceedings in similar terms:

The proceeding \* \* \* is in no sense a trial and sentence for a crime or offense. It is simply the ascertainment, by appropriate and lawful means, of the fact whether the conditions exist upon which congress has enacted that an alien of this class may remain within the country. The order of deportation is not a punishment for crime. It is not banishment. \* \* \* It is but a method of enforcing the return to his own country of an alien who has not complied with the conditions upon the performance of which the government of the nation, acting within its constitutional authority, and through the proper departments, has determined that his continuing to reside here shall depend. He has not, therefore, been deprived of life, liberty, or property without due process of law; and the provisions of the constitution, securing the right of trial by jury, and prohibiting unreasonable searches and seizures and cruel and unusual punishments, have no application. *Fong Yue Ting v. United States*, 149 U.S. at 730.

<sup>2</sup> The Court employed the similar test established in *United States v. Janis*, 428 U.S. 433 (1976). The Court declined to rule whether even "egregious violations of Fourth Amendment or other liberties that might transgress notions of fundamental fairness and undermine the probative value of the evidence obtained," could be reached on review of a deportation proceeding. 468 U.S. at 1050-1051.

later, *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206 (1953), the Supreme Court addressed the use of an exclusion regulation to long term resident aliens who were returning to the United States from extended trips abroad. The regulation provided for exclusion "without notice of any charge against [them] and without opportunity to be heard in opposition thereto." 344 U.S. at 595. The Court held that in some circumstances, resident aliens returning to the United States from trips abroad may not be so excluded without a hearing. Chew's five month departure with the merchant marine service was held not to divest him of any Fifth Amendment rights that he had enjoyed while remaining in this country. Mezei's two year departure behind the Iron Curtain did divest him of those rights. He lost his former right, upon reentry, the "assimilation" to the procedural posture of a lawful permanent resident.

Significantly, the Chew and Mezei decisions concerned aliens who were denied hearings and notice of the charges in the altogether. The process there was mandated by an exclusion regulation, not an express congressional prescription. See 345 U.S. at 211-212 n. 8. The proceedings in each case had been adjudicated by Department officials, not by an independent judiciary, as provided for in section 201. The nondisclosure regulation required only an administrative finding that disclosure "would be prejudicial to the public interest." That limitation falls far short of the mandatory minimum in section 201(e)(2) for "no summary" determinations that even a summary "would likely cause serious and irreparable harm to the national security or death or serious bodily injury to any person." Nor did the risk alleged in Chew and Mezei the latter standard.

Neither decision construed the "reasonable opportunity" confrontation standard set forth in the Immigration and Nationality Act. The decisions are ultimately constitutionally based, but say nothing about how much hearing, notice, and confrontation are required. Chew holds only that "he is entitled to notice of the nature of the charge and a hearing at least before an executive or administrative tribunal." 344 U.S. at 597.

The foregoing distinctions would be compelling in conducting the analysis required by *Mathews v. Eldridge*. The Department of Justice therefore believes Chew would not control the result with respect to the rare case in which a resident alien might be deported without section 201. The process accorded in even the extreme case under section 201 would vastly exceed that accorded in Chew and Mezei.<sup>3</sup>

The district court decision in *Rafeedie v. INS*, 795 F. Supp. 13 (D.D.C. 1992), is similarly unavailing. Rafeedie was a resident alien placed in summary exclusion proceedings upon his return from a meeting with a terrorist organization in Syria. In the context of an ex parte *in camera* exclusion process before an INS official, Rafeedie was given a short summary of the classified evidence against him. The process accorded Rafeedie, apart from notice of the charge and the opportunity to submit a written response, was otherwise similar to that upheld in Mezei. See 8 U.S.C. § 1225(c) and 8 C.F.R. 235.8. Based on a perception that Rafeedie was insufficiently dangerous, the court held the Government's national security interest insufficient to outweigh Rafeedie's interests, under the Mathews test. It therefore found that the process applied to him to that point in time was insufficient. 795 F. Supp. at 20. However, the court expressly declined to find the process unconstitutional on its face. It suggested that the process might pass muster if the Attorney General were to augment the proceeding with more than "vague specifications." 795 F. Supp. at 21.

Significantly, the district court's initial decision in Rafeedie conceded that Rafeedie, as a resident alien, might be accorded a hearing yet denied the dispositive evidence against him:

[S]hould plaintiff be entitled to a hearing before an immigration judge, he might still never be apprised of the specific confidential information on the basis of which defendants contend [he] is excludable; he may neither be able to confront his accusers nor cross-examine informers because the confidential information might still require *in camera* scrutiny \* \* \* Thus the substantive result of an ordinary exclusion proceeding may well be the same as that of summary exclusion proceeding—Rafeedie could be excluded on the basis of information or an accuser that he neither sees nor confronts.

688 F. Supp. 729, 750-751 (D.D.C. 1988). In sum, the court appears to have concluded that extremely limited additional process would have satisfied it. Again, section 201 vastly exceeds by placing it before Article III judges. The "no summary"

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<sup>3</sup>In view of the fact that resident aliens may naturalize within a few years, the long-term resident has the ability to avoid the section 201 process by perfecting his status.

exception which is the focus of this question is available only where the sovereign interests are paramount.

In *Greene v. McElroy*, 360 U.S. 474, 507 (1959), the Supreme Court indicated that an express congressional authorization for the nondisclosed use of classified information in denying a security clearance necessary to hold a job might pass constitutional muster, even though agency promulgation of a regulation to that effect did not:

Before we are asked to judge whether, in the context of security clearance cases, a person may be deprived of the right to follow his chosen profession without full hearings where accusers may be confronted, it must be made clear that the President or Congress, within their respective powers, specifically has decided that the imposed procedures are necessary and warranted and has authorized their use \* \* \*. They must be made explicitly not only to assure that individuals are not deprived of cherished rights under procedures not actually authorized, but also because explicit actions, especially in areas of doubtful constitutionality, requires careful and purposeful consideration by those responsible for enacting and implementing our laws.

(citations omitted). The court expressly avoided the bottom-line determination of whether such procedures would necessarily be constitutional. 360 U.S. at 508. Justice Clark, in a dissenting opinion, concluded that the process was constitutional and that such process had been in de facto effect through three administrations. "This Court has long ago and repeatedly approved administrative action where the rights of cross-examination and confrontation were not permitted." 360 U.S. at 515-516 (citation omitted). See also *Molerio v. FBI*, 749 F.2d 815 (D.C. Cir. 1984).

It is important to observe that the Immigration and Nationality Act provides for a number of distinct procedural constructs for adjudicating the various applications and relief for which aliens may apply or expulsion provisions to which they may be subject. Each of them provides for a measure of process which the Congress has deemed appropriate to the nature of the interest involved. As noted above, the Supreme Court in *Mezei* approved the use of summary exclusion without notice, disclosure, or a hearing in the case of a long term resident alien. See also *Azzouka v. Sava*, 777 F.2d 68 (2d Cir. 1985), cert. denied, 479 U.S. 830 (1986); *El-Werfalli v. Smith*, 547 F. Supp. 152 (S.D.N.Y. 1982). In *Jay v. Boyd*, 351 U.S. 345 (1956), the Court approved the use of a similar process to deny suspension of deportation. See also *Suciu v. INS*, 755 F.2d 127 (8th Cir. 1985). An alien ordered deported and one ordered deported but denied suspension of deportation on the basis of undisclosed confidential information stand in similar shoes. As the Court observed in *Carlson v. Landon*, short of naturalization, all aliens "remain subject to the plenary power of Congress to expel them \* \* \*" 342 U.S. at 534. Under *Mathews v. Eldridge*, the limited status enjoyed by such aliens does not approach the sovereign interests implicated by section 201. "[W]hile the Constitution protects against invasions of individual rights, it is not a suicide pact." *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 160 (1963).

5. The secret evidence provisions would allow secret proceedings whenever disclosure of evidence to the alien would likely cause serious injury to any person. How is this different from the danger posed whenever the government in a criminal trial uses informant testimony, which might cause serious injury to the informant?

It differs in three principal respects. First, the disclosure provisions in section 201 concern national security information, as opposed to the interests of a particular informant having no national security impact in a typical criminal case. Second, the confrontation right of the criminal defendant is governed by the Sixth Amendment, while the confrontation right granted a deportable alien, that of a "reasonable opportunity" to confront, is strictly a creature of statute. Finally, the criminal defendant has that right because he stands in jeopardy of losing life or liberty. Deportation proceedings are civil in nature. The alien lacks that interest.

6. Would section 202(d) allow the use—and withholding from the alien—of secret evidence in any deportation proceeding?

It is limited by its terms to aliens who have not been lawfully admitted for permanent residence.

7. The fundraising provisions in S. 390 require a citizen wishing to support the legal activities of a group to establish that the funds are to be used exclusively for certain permitted purposes. How do you reconcile that with the statement of the Supreme Court in *Healy v. James*, 408 U.S. 169, 186 (1972), that "The government has the burden of establishing a knowing affiliation with an organization pursuing unlawful aims and goals, and a specific intent to further those illegal aims?"

Subsection (e) of the bill provides a mechanism for the licensing of fundraising and funding activities on behalf of designated foreign terrorist organizations. The

sentence quoted from *Healy v. James* is addressed to the government's burden of proof when it seeks to impose burdens "solely because of a citizen's association with an unpopular organization." 408 U.S. at 186 (emphasis added). The licensing provisions of subsection (e) are carefully limited to fundraising and funding activities on behalf of designated terrorist organizations, and do not penalize a citizen's "association alone" with an organization, which was the subject at issue in *Healy v. James*. Moreover, because S. 390 permits the licensing of fundraising and funding activities that support the lawful endeavors of terrorist organizations, the bill is focused narrowly on "the threat feared by the Government" (*Healy v. James*, 408 U.S. at 186, quoting *United States v. Robel*, 389 U.S. 258, 265 (1967)), and not more generally on mere association.

9. To date, how much money has been frozen or blocked as a result of the President's January 25, 1995 executive order prohibiting transactions with terrorists who threaten to disrupt the Middle East peace process? Please indicate the banks or other institutions in which the amounts were located and which of the 12 organizations designated by the President they belonged to?

At this time, the disclosure of the total amount of assets blocked, the locations at which those blockings have occurred, and the organization to which the assets belonged could impede ongoing enforcement activities that are intended to identify and block additional assets in which terrorist organizations identified under Executive Order 12947 have an interest. The current total value of blocked assets under the terrorism Executive Order is not high. However, as the program proceeds, we expected the value of blocked assets to climb and the number of terrorist organizations affected to increase.

#### QUESTIONS ON PRIVACY AND CONFIDENTIALITY

1. Does the creation of a Population Registry raise any concerns about personal privacy for you and the Department? If so, how are they being addressed and what protections for personal privacy are being considered in connection with the Population Registry?

Yes. We are working on an interagency basis within the Federal Government, as well as with concerned private groups to discuss all facets of privacy and discrimination interests as they relate to the verification pilot projects we are planning to conduct. The Administration is committed to testing various verification techniques before making any permanent decisions about the feasibility and desirability of any particular verification system or systems. We will submit our evaluation and recommendations to Congress within three years. Depending on the outcome of the pilots, we will ask Congress for permanent authorization to expand or implement any successful verification techniques.

2. Is it cost effective to create such a Population Registry? What will it cost and what will be the benefits obtained thereby?

At this time, we do not have sufficient information to determine the total cost, cost-effectiveness, benefits, or drawbacks of a national registry. We are planning to test and evaluate various verification techniques before making any permanent decisions about the feasibility and desirability of any particular verification system or systems.

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#### RESPONSES OF ATTORNEY GENERAL RENO TO QUESTIONS SUBMITTED BY SENATOR THURMOND

1. General Reno, ongoing efforts to increase the number of Border Patrol Agents are certainly impressive. Does this increase, put pressure of other parts of the system which now need to be reinforced, such as adjudication of all of the illegal aliens apprehended?

Yes. Increasing the number of Border Patrol Agents, equipment, and technology to deter and apprehend illegal entrants between the Ports-of-Entry puts significant pressures on other activities, support programs, and systems which are required to dovetail with the results of that strategy. Increased pressures by the Border Patrol between the ports puts increased pressures on the ports as illegal entrants attempt entry with fraudulent documentation and false claims to citizenship. Also, the additional apprehensions which can be expected in most locations, particularly in the short run, require a concomitant increase in the requirements for detention space, detainee transport, court processing, and associated administrative tasks.

The Administration's FY 96 budget proposal responds to each of these needs. For FY 96, the Administration has requested resources to strengthen the Ports-of-Entry, prevent document fraud, enforce employer sanctions, expand detention capacity and detainee transport, and enhance court processing and persecutions. Along with con-

tinued support of the Border Patrol, these initiatives must be supported and extended in the future to establish deterrence at our borders.

2. General Reno, in addition to spending more money and hiring more people, what can you tell us about efforts to improve the management of the resources that have already been committed to the fight against illegal aliens?

Immediately following her confirmation as Commissioner of the Immigration and Naturalization Service (INS) in October 1993, Doris Meissner directed the Service to take numerous actions to address problems associated with its management systems and leadership practices. These actions included:

- implementing a top-to-bottom agency reorganization which decentralized decision-making authority and restored program accountability to field offices;

- strengthening the management team with targeted recruitment of talented leadership to fill key positions in Headquarters, the Regions, and field offices, including new directors in 10 district offices;

- developing a Strategic Plan as a blueprint for reform to guide planning, budgeting, and decision-making in carrying out the INS mission;

- developing a new priority management program to break down the Strategic Plan into specific goals and timetables for senior manager, and conducting periodic progress reviews and assessments of the program;

- adopting a new resources for budget planning, which reordered priorities to meet mission needs with a balanced infusion of personnel, equipment, and technology;

- strengthening internal review and oversight through the INS' Office of Internal Audit, spending \$9 million to conduct new background investigations of 4,341 employees in sensitive positions, and achieving consistency in pre-employment screening of job applicants;

- strengthening fee account management by developing more accurate models, through a contracted service, for forecasting fee revenues; and,

- standardizing automation and communications Servicewide by launching a three-year strategy to install standard computer and telephone equipment in more than 600 sites. (To date, installation has been completed at 11 sites employing 1,000 personnel, with installation in progress at another 107 sites on the Southwest border.)

In the areas of the financial management and accounting systems, the Department of Justice has provided approval for INS to acquire, modify, and implement an off-the-shelf financial management system, including improvements to support systems for fee management. The Justice Management Division (in cooperation with the Department's Inspector General) is providing oversight to the INS financial management system project and INS' corrective action plan by:

- reviewing and approving, as appropriate, the INS financial management system plan, the INS corrective action plan, and updates to those plans;

- conducting periodic project status meetings; and,

- facilitating and participating in the use of the Center for Applied Financial Management (Department of the Treasury, Financial Management Service) in INS' implementation of the U.S. Government Standard General Ledger.

3. General Reno, please discuss your perspective on the effects of giving enforcement agencies a financial incentive to enforce the law, such as the Administration's proposal to credit employer sanction penalties to excess of five million dollars to INS appropriations. Could this distort enforcement priorities and result in too much emphasis on sanctions that may result in money for the agency and too little action on other important areas of enforcement?

The Administration's proposal to credit employer sanctions penalties in excess of five million dollars to the INS appropriation will not distort enforcement priorities. Monetary penalties are an important enforcement tool which, when broadly applied, discourage employers from the ignoring or sometimes knowingly avoiding their legal responsibilities to hire only authorized workers.

In effect, those employers found administratively or criminally guilty would defray the Government's cost of enforcing the law. This philosophy has been used with success in other areas where violators are deprived of their ill-gotten gains, and some of the proceeds are made available for enforcement activities. The INS will establish sound policies and procedures, and provide judicious management and oversight to avoid any potential for abuse or distortion of priorities.

4. General Reno, I appreciate how difficult it is to quantify issues relating to illegal aliens, where application of greater resources often means that lower numbers of illegal aliens are apprehended. Stepping back from the precise numbers, please give us your impression about whether we are doing better overall in keeping illegal aliens from crossing our borders, or are we just shifting the problem from one location to another?

Currently, we are doing a better job at preventing illegal entry through a mixture of deterrence and apprehension. We are shifting illegal entry patterns as a crucial and intended part of our border strategy. Higher apprehension numbers in areas where we have channelled illegal traffic reflects the success of our strategy.

As we have implemented our strategy in the El Paso Sector (Operation Hold-the-Line), the San Diego Sector (Operation Gatekeeper), and the Tucson Sector (Operation Safeguard), we have seen positive results. In El Paso, increased numbers of agents on the line in the urban areas significantly lowered the number of illegal crossings and apprehensions between the Ports-of-Entry. It shifted entry attempts to Ports-of-Entry and more recently to outlying areas which are more susceptible to our enforcement and apprehension efforts. As illegal entrants are forced to these more difficult outlying areas and as our apprehension efforts in those locations become increasingly effective, we expect to see a further decline in entry attempts and apprehensions in the El Paso area.

In San Diego, our objective of stopping illegal entry in the main Imperial Beach corridor and shifting entry attempts to less hospitable outlying geography to the east is showing clear results. Imperial Beach entry attempts and apprehensions are at a historic low and increased flow to the eastern, less hospitable areas is clearly visible. As in El Paso, we expect near-term increases in apprehensions in these locations until we fully establish a presence which deters illegal entry attempts.

The 62 agents who were detailed to the Tucson Sector in February to stop the increased flows, which we think may be partly attributable to our successes in El Paso and San Diego, had the intended effect of increasing apprehensions. We are currently establishing a presence to shift the flow of illegal entry to the outlying areas where we have an enforcement advantage. We are replacing the detailed agents with permanent full-time agents. On April 24, 47 new full-time agents were present for duty in Nogales and Douglas subsequent to their recent graduation from the Border Patrol Academy. Thirty-seven agents are presently training at the Academy and are scheduled to report to Nogales and Douglas in June.

#### RESPONSES OF COMMISSIONER MEISSNER TO QUESTIONS SUBMITTED BY SENATOR PATRICK LEAHY

1. Has the Administration signed off on the so-called "Centers of Excellence" plan for reorganizing administrative services within the INS?

The draft proposal to consolidate administrative functions and create specialized Administrative Centers has not been finalized and is still in the formulative stages. We have held preliminary briefings with Department of Justice (DOJ), OMB officials and the Vermont, California, Minnesota, Texas, Maryland and Virginia Congressional state delegations regarding the draft consolidation proposal. We have briefed key Headquarters program managers and employees, Administrative Center employees, and the Regional Directors and have invited everyone to submit comments. To ensure we meet the increasing challenges that INS is facing, while striving to improve and streamline our administrative support services, we are pursuing a measured approach that will evolve gradually over the years. To that end, I am convening a task force comprised of Regional Directors, Acting Administrative Center Directors, and other key managers to develop an intermediate proposal which addresses administrative support areas of immediate concern. In addition, the Department of Justice Management and Planning Staff is undertaking a review of this INS administrative support services as requested by INS.

2. Does the basic reorganization being proposed as the so-called "Centers of Excellence" plan amount to 302 administrative positions being transferred to other offices with no savings from the elimination of any such positions?

No. INS believes that there could be a reduced number of supervisors under the new proposal, but that number has not been determined yet. Savings would be generated from reduced rental costs and the shifting of positions from an area that generates higher salary costs to a lower salary cost area. In addition, administrative support staff has remained flat while the INS has been growing, although a Justice Management Division review indicated that INS needs at least an additional 217 support positions. However, until the DOJ review referenced in the response to Question 1 is complete, no specific changes are planned at this time.

3. What plans does INS have for "cross-servicing" other aspects or functions of the Department of Justice through these so-called "Centers of Excellence"?

At present, all of INS' plans and energies are focusing on accomplishing its immigration enforcement and service missions. However, in theory, creating Specialized Administrative Centers could position INS for cross servicing other agencies, in the

long-term, as the Centers became increasingly proficient and automated through specialization.

4. How much has the development of the so-called "Centers of Excellence" plan cost, taking into account the cost of personnel and expenses? Please provide a detailed breakdown and explanation of such costs including activities, dates, participants and locations involved.

The task force responsible for the draft report began working on this project on a full time basis in June 1994. Their work was completed in mid-October 1994. The task force was composed of three employees—John Neach (GM 14), Sandra Piira (GM 14), and Ann Simeone (GM 14). The approximate salary cost for each of these employees is \$65,000 per year (salary is not in published personnel listing). In addition to their salaries, about \$10,000 was expended for travel to various locations to gather information. Upon completion of the DOJ review, an updated cost will be provided.

5. How much will the so-called "Centers for Excellence" plan cost to implement, taking into account the costs of personnel, expenses, transition and the possible disruption of administrative support, loss of institutional memory and talent? Please provide a detailed breakdown and explanation of such costs by administrative function and year.

Total costs will be provided after the DOJ review is completed, and a final proposal for the Centers is approved.

6. I have asked for, but not been provided with, the basis for INS' estimate that it could save \$1.95M in the second year of this administrative reorganization and could save \$3.9M in each succeeding year. Please provide a detailed breakdown and explanation of such estimated savings by administrative function and year.

INS projects that the Office of Management would realize a \$3.9M savings beginning in year 4 after implementation of the consolidation of functions. During the second year of implementation, the bulk of the expenses would be incurred, but as the cost of doing business was lowered, INS projects that \$1.95M would be saved, based on:

Lower rental space costs.

Fewer Office of Management employees, as some of the affected employees choose to move to other programs within INS or outplace to other agencies, rather than transfer to new locations or be retrained.

More and improved automation of transactional processes.

Attached are charts used to calculate the estimated costs and savings associated with the consolidation proposal. Automation-related costs and savings are not available for calculating these estimates. However, pending completion of the DOJ review on the Centers, the entire proposal may change.

	BUR	TWIN CITIES	DALLAS	LAGUNA	HQ	TOTAL
ESTIMATED COST/SAVINGS						
AVG COST/SQ FT	\$19.13	\$17.55	\$19.73	\$23.63		\$24.99
AVE SQ FT/PERSON	258	270	242	258		255
ALLOCATED PS&B FOR FY95	\$5,761,000	\$4,418,000	\$7,067,000	\$7,721,000		\$46,506,000
AVG SAL/BENEFITS						
NET MOVES	-22	111	191	-115		-165
SAVINGS/COSTS SAL/BENEFITS	(\$892,540)	\$4,855,473	\$8,938,991	(\$5,103,010)	(\$11,268,015)	(\$3,469,101)
RENT	(\$108,582)	\$525,974	\$911,960	(\$701,102)	(\$1,051,454)	(\$423,205)

## A nationwide guide to calculating home costs

**P**lanning a move that you let wondering whether you'll be a new city? Considering some house to buy? Consider the following tips for finding a home.

**How the index works**

For example, say you own a \$62,125 home in Get Well (grades 4-7) and you want to know what it would cost to buy a similar home in Beverly Falls. Last year it was \$43,21.

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State or District	Number of Institutions	Number of Students	Number of Teachers	Number of Rooms	Value of Buildings	Value of Furniture	Value of Equipment	Value of Books	Value of Machinery	Value of Other Property	Value of Total Property	Per Capita Value of Property	Per Capita Value of Teachers	Per Capita Value of Students
Alabama	1,121	100,000	1,121	1,121	\$10,000,000	\$1,000,000	\$100,000	\$100,000	\$10,000	\$100,000	\$10,121,000	\$90	\$90	\$90
Alaska	1	100	1	1	\$10,000	\$1,000	\$100	\$100	\$10	\$100	\$10,110	\$11,111	\$11,111	\$11,111
Arizona	10	1,000	10	10	\$100,000	\$10,000	\$1,000	\$1,000	\$100	\$100	\$111,100	\$11,111	\$1,111	\$1,111
Arkansas	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
California	1,000	100,000	1,000	1,000	\$10,000,000	\$1,000,000	\$100,000	\$100,000	\$10,000	\$100,000	\$10,110,000	\$111,111	\$111,111	\$111,111
Colorado	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Connecticut	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
District of Columbia	1	100	1	1	\$10,000	\$1,000	\$100	\$100	\$10	\$100	\$10,110	\$11,111	\$11,111	\$11,111
Florida	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Georgia	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Hawaii	10	1,000	10	10	\$100,000	\$10,000	\$1,000	\$1,000	\$100	\$100	\$101,100	\$10,111	\$1,011	\$1,011
Idaho	50	5,000	50	50	\$500,000	\$50,000	\$5,000	\$5,000	\$500	\$5,000	\$555,000	\$11,111	\$1,111	\$1,111
Illinois	1,000	100,000	1,000	1,000	\$10,000,000	\$1,000,000	\$100,000	\$100,000	\$10,000	\$100,000	\$10,110,000	\$111,111	\$111,111	\$111,111
Indiana	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Iowa	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Kansas	50	5,000	50	50	\$500,000	\$50,000	\$5,000	\$5,000	\$500	\$5,000	\$555,000	\$11,111	\$1,111	\$1,111
Louisiana	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Maine	50	5,000	50	50	\$500,000	\$50,000	\$5,000	\$5,000	\$500	\$5,000	\$555,000	\$11,111	\$1,111	\$1,111
Maryland	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Massachusetts	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Michigan	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Minnesota	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Mississippi	50	5,000	50	50	\$500,000	\$50,000	\$5,000	\$5,000	\$500	\$5,000	\$555,000	\$11,111	\$1,111	\$1,111
Missouri	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Nevada	10	1,000	10	10	\$100,000	\$10,000	\$1,000	\$1,000	\$100	\$100	\$101,100	\$10,111	\$1,011	\$1,011
New Hampshire	50	5,000	50	50	\$500,000	\$50,000	\$5,000	\$5,000	\$500	\$5,000	\$555,000	\$11,111	\$1,111	\$1,111
New Jersey	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
New Mexico	50	5,000	50	50	\$500,000	\$50,000	\$5,000	\$5,000	\$500	\$5,000	\$555,000	\$11,111	\$1,111	\$1,111
New York	1,000	100,000	1,000	1,000	\$10,000,000	\$1,000,000	\$100,000	\$100,000	\$10,000	\$100,000	\$10,110,000	\$111,111	\$111,111	\$111,111
Pennsylvania	1,000	100,000	1,000	1,000	\$10,000,000	\$1,000,000	\$100,000	\$100,000	\$10,000	\$100,000	\$10,110,000	\$111,111	\$111,111	\$111,111
Rhode Island	50	5,000	50	50	\$500,000	\$50,000	\$5,000	\$5,000	\$500	\$5,000	\$555,000	\$11,111	\$1,111	\$1,111
Tennessee	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Vermont	50	5,000	50	50	\$500,000	\$50,000	\$5,000	\$5,000	\$500	\$5,000	\$555,000	\$11,111	\$1,111	\$1,111
Virginia	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Washington	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
West Virginia	50	5,000	50	50	\$500,000	\$50,000	\$5,000	\$5,000	\$500	\$5,000	\$555,000	\$11,111	\$1,111	\$1,111
Wisconsin	100	10,000	100	100	\$1,000,000	\$100,000	\$10,000	\$10,000	\$1,000	\$10,000	\$1,111,000	\$11,111	\$11,111	\$11,111
Wyoming	10	1,000	10	10	\$100,000	\$10,000	\$1,000	\$1,000	\$100	\$100	\$101,100	\$10,111	\$1,011	\$1,011

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	Actual	Budget	Variance	Comments
Transport	\$10,844	\$11,711	(-\$867)	
Travel	\$10,016	\$10,616	(-\$599)	
Wlam Bus	\$15,650	\$0	\$15,650	
				Grand Total
				\$41,510

Observation

QUEEN'S VOL 6 = CHAIE

7. Given the increasingly important tasks and programs that make up INS' mission, do you believe that this is the appropriate time to be simultaneously reorganizing its administrative services?

The INS agrees that we are now facing one of our biggest challenges—hiring an additional 5,000 employees this fiscal year. Given the current shortages in administrative staffing, we are seriously concerned about providing quality and timely service in allocating and deploying these critical resources. Accordingly, we are convening a task force to address immediate administrative support areas of concern, while we move toward creating Specialized Administrative Centers at a slower pace.

8. On what basis are IRM and ADP contracting exempted from this administrative reorganization? Is headquarters the so-called "Center of Excellence" for these functions?

The Automated Data Processing (ADP) contracting function is provided solely by the ADP Contracts office within the Headquarters procurement branch. The Office of Information Resources Management (OIRM) provides all required acquisition program support. ADP requirements below the small purchase threshold (currently \$25,000) such as personal computers, are acquired by INS' general contract offices at Headquarters and in the four Administrative Centers.

ADP contract requirements are separate and distinct from general contract requirements, and require additional acquisition approvals and heightened coordination between the contract and the program office due to the nature of Information Systems as a complex and quick changing technology. The ADP contracts office along with INS' OIRM is responsible for acquiring INS' major national computer and telecommunications systems requirements, such as the Integrated Technology Program (ITP) and Personal Workstation Acquisition Connect (PWAC).

In the next few years extensive expansion/upgrades of the INS infrastructure are being accomplished requiring the close proximity of IRM and ADP contracting. Once this tremendous agenda is completed, the location of ADP contracting and some IRM functions may be re-evaluated.

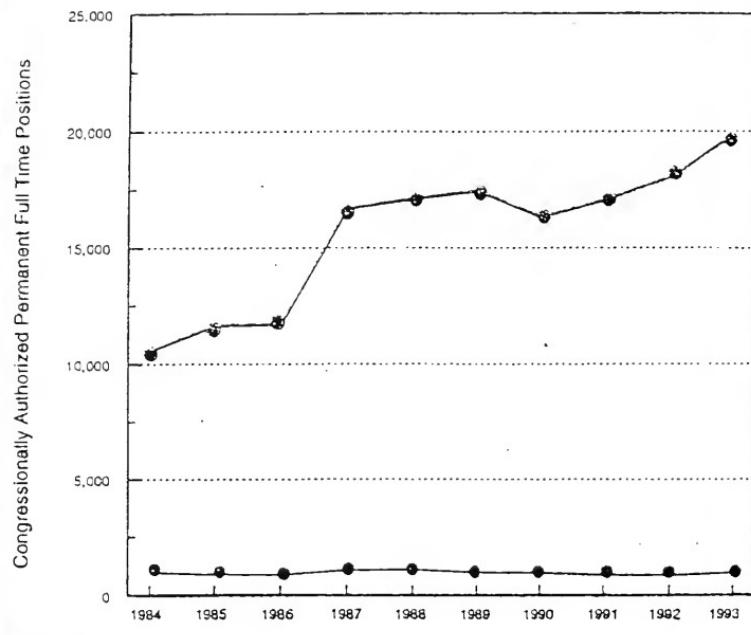
9-18. Please provide the basis for INS' determination to select the particular center it has for finance, contracting, facilities/construction, contract security, personal property, PCS, personnel staffing, personnel classification, personnel security, employee payroll and records activities, debt collection, and national safety and health program.

Currently, the INS provides its administrative support through a network of five offices, all performing essentially the same functions but for a specific geographical location: the four Administrative Centers in Dallas, Burlington, Laguna Niguel, and Twin Cities, and the INS Headquarters office in Washington, D.C. All five offices are under the Executive Associate Commissioner for Management.

Each of these locations performs such functions as staffing, classification, finance, budget, procurement, facilities, property/inventory management, files and forms management, security, training, labor-management relations, and ADP. The most distinguished feature of the Headquarters location is that all policy is generated here, together with evaluation and compliance activities. Each of the five offices has its different procedures for accomplishing its responsibilities which has resulted in a lack of consistency and an inefficient use of limited resources.

In addition to the lack of standardization of our administrative services, a significant shortage of administrative support staff exists. In 1992 and 1993 two studies were conducted which identify the critical administrative staffing needs. The first study "Administrative Services in the INS," which was performed by the Department's Justice Management Division, concluded that the administrative staffing needs were critical and recommended an increase of a minimum of 217 positions and that INS needed to standardize the organization and operations of its administrative offices. The second study "Management and Administrative Staffing" was performed by an internal Task Force which utilized two nationwide surveys concerning workload and customer satisfaction to gauge the extent of the problem. The survey found that while permanent positions Servicewide increased between 1984 and 1993, the administrative positions in the same time period declined (see attached chart). Despite the ongoing increases in the operational programs, e.g. border patrol, inspections, etc., no increases have been forthcoming for administrative staffs to do the hiring, the recruiting, the training, paying the bills, and doing the contracting work. The study also showed that the customers varied widely in their ratings of quality of service among the four Administrative Centers and Headquarters.

Immigration and Naturalization Service  
 Administrative Positions Compared to Total Positions  
 FY 1984 Through FY 1993



(Budget Codes 3270, 5210, 5220 Only)

Total INS Positions

Note: In 1989, 135 positions were transferred from INS to the new Office of the Inspector General along with audit and inspection functions. The INS reorganization reestablishes an internal audit function within INS.

Source: Data Supplied by  
 NS Special Projects Staff

If the INS is to continue meeting the demands for providing administrative services, we must re-examine how we do our business. The current structure of having duplicate administrative offices with no increase in staff cannot effectively and efficiently support the growth of the INS.

At present, INS has requested the Department of Justice to undertake a comprehensive review of administrative support services, and once a final determination has been made, we will be glad to share the underlying basis for that determination with you, your staff, and your constituents.

19. What chronic roadblocks and inefficiencies within the INS bureaucracy exist in each region with respect to each administrative function and how will the so-called "Centers of Excellence" plan correct them.

Currently it is possible for similar positions to be classified at different grade levels across the Service, depending on which Human Resources Office processes the request. In addition, depending on geographic location, INS employees receive differing patterns of service, i.e. time of process a travel voucher, time to process an award, time to correct payroll errors, etc. Also, managers of INS districts and sectors receive different levels of service in receipt of management reports, administrative compliance reviews and assistance in monitoring their resource utilizations. Consolidating our administrative functions and resources into Specialized Administrative Centers is a proposal that would enable the INS to ensure that standardized processes and, therefore, a standard level of quality is in place Servicewide.

20. How did "customer satisfaction" compare from region to region and from administrative function to function in the 1992 Administrative Staffing Task Force Study?

The "Management and Administrative Staffing" study found that while permanent positions Servicewide increased between 1984 and 1992, the administrative positions in the same time period declined (see attached chart). Despite the ongoing increases in the operational programs, e.g. border patrol, inspections, etc., no increases have been forthcoming for administrative staffs to do the hiring, the recruiting, the training, paying the bills, and doing the contracting work. The study also showed that the customers varied widely in their ratings of quality of service among the four Administrative Centers and Headquarters.

21. How many of the 302 positions do you plan on filling with current employees in those functions transferring to the new, consolidated, specialized administrative centers?

Under the draft proposal, all current affected employees would have been offered the options of retraining if placed in a different position, relocation, and priority placement services consistent with governing Federal regulations and guidelines. Depending on the outcome of the DOJ study, we would expect this practice to remain the same.

22. How many supervisory positions are planned for elimination in connection with the so-called "Centers of Excellence" plan?

The implementation teams that were to be convened, after the draft proposal was finalized and OMB and congressional notification requirements were met, would develop detailed staffing plans, organizational structures, and mission and functions statements.

23. When did you issue a decision memorandum to consolidate administrative services? Please provide a copy.

Since the proposal is still in draft form, no decision memorandum is necessary at this time. We do not anticipate releasing such a document until after the DOJ study is complete.

24. How does the so-called "Centers of Excellence" reward staffs who have been providing services well?

We are proud of our Administrative Centers staff who have performed well. However, the objectives of the consolidation proposal are to streamline the present duplicative administrative services and improve service delivery and quality provided to INS staff and to the public. For INS to continue to meet the ever-increasing demands to provide administrative services and to support the growth elsewhere within INS, we must simplify processes and eliminate inconsistency as well as reduce layers of management and bureaucracy. The proposed breakdown of consolidation of functions does not mean that an Administrative Center was not doing a good job in all functions they are currently responsible for, but that all factors being considered such as lower costs of doing business, central location, time zones, labor market, as well as demonstrated expertise contributed to the proposed recommendations.

25. Over the past three years what efforts has INS Headquarters taken to improve administrative services?

Headquarters have taken numerous actions to improve administrative services throughout the INS. Some examples of this include:

The Office of Management published customer service standards for the first time. These standards are being validated and will continue to be improved and periodically evaluated.

HRA developed an expedited hiring plan to be used in conjunction with targeted recruitment for Border Patrol Agent positions that shortens the amount of time to make job offers by 4 to 5 months.

INS initiated a Telephone Application Processing System (TAPS) for hiring Border Patrol Agents. TAPS has reduced the amount of time required to hire an applicant, eliminated the need for the standard employment application form (SF 171) from all initial applicants, resulting in less paperwork for the Service.

The INS renegotiated Collective Bargaining Agreements with both of its unions, the National INS Council (NINSC) and the National Border Patrol Council (NBPC).

The INS plans to install (and has started installing) a standard hardware, software and communications platform in all offices (over 600 distinct sites). Each location will be provided with a common set of capabilities that include word processing, spreadsheets, other office automation capabilities, file and print sharing, electronic mail, and connectivity within the local office, office to office and to central systems.

The INS implemented a service-wide Electronic System for Personnel Actions (paperless processing). Twenty-one offices will be brought on line in fiscal year 1995.

The INS has strengthened its Personnel Security Program. A service-wide Re-investigations Program is now fully operational; initial employment security screening procedures have been improved.

A national memorandum of agreement between INS and the U.S. Army Corps of Engineers is in place that establishes the working relationship for implementing on-going and future construction projects.

A Vehicle Authorization Document (VADs) has been created to determine the composition of vehicle purchases and vehicle replacements.

A service-wide implementation of the VISA BankCard program for small purchases has begun in the Twin Cities Administrative Center and the program should be fully implemented during the current fiscal year.

The INS has been delegated authority by the Department to implement Electronic Data Interchange (EDI) on a limited basis. EDI is a paperless procurement process which allows the procurement office to place requirements on an electronic bulletin board. Contractors review the bulletin board and place offers. Awards are provided electronically.

The INS awarded a contract for software development and maintenance in order to provide advanced, cost effective, state-of-the-art technological information processing. This contract was made under pilot programs established by both the Office of Federal Procurement Policy and the General Services Administration, and has become recognized as one of the most innovative and successful contracting efforts within the federal government.

The INS has broadened and integrated its debt management systems infrastructure.

The Corporate Database will be the core of INS's Information Systems Architecture. It reduces data redundancy, improves system operating speed and reduces the number of sources officers must query when seeking information on an alien. We would expect this practice to remain the same for future proposals.

26. Over the past three years what administrative staff has been added to each region and to headquarters to serve what functions?

The INS Office of Management is currently preparing an analysis of staffing at Headquarters and at the Regions for the last three years. We will provide you a copy when that analysis is completed.

27. What has been the involvement of each of the following in the development of the so-called "Centers of Excellence" plan: the Executive Associate Commissioner for Programs, the Executive Associate Commissioner for Field Operations, the Executive Associate Commissioner for Policy and Planning, the Associate Commissioner—Enforcement, the Associate Commissioner—Examinations, the Regional Directors and Acting Directors, the heads of the Regional Administrative Offices?

Regional Directors did not exist until June 1994 under the current reorganization structure. As early as 1992, the Acting Administrative Center Directors (who were formerly Regional Administrators) were introduced to the concept of Specialized Administrative Centers. At the Office of Management (OM) quarterly meeting in January 1993, one of the four agenda items was a discussion of Specialized Administra-

tive Centers, and at that meeting the Directors and OM Headquarters Program Managers had an open discussion brainstorming on what functions could be consolidated and concerns/problems associated with this concept. The Executive Associate Commissioner for Management held a discussion at the Commissioner's Conference last fall and presented an update to all participants on the concept of creating Specialized Administrative Centers. Once the DOJ assessment is complete, it will be reviewed by all appropriate parties before a final decision is made.

28. What has been the involvement of each of the following in the development of the so-called "Centers of Excellence" plan: Mr. Rath, Ms. Sale, Ms. Gwinn, Ms. Lee, Ms. Blessing?

As the Executive Associate Commissioner (EAC) for Management, Mr. Rath appointed Ms. Gwinn to be Project Leader of the Task Force which prepared the draft report on consolidation of administrative functions. Deputy Commissioner Sale was briefed on the draft proposal by the EAC Rath, John Schroeder, Associate Commissioner, Office of Administrative Centers and his staff. Ms. Lee's involvement was similar to other Acting Directors as described in Question 27 above and Ms. Blessing was one of the 100 employees interviewed by the Task Force team.

29. Please provide a copy of the 1992 INS internal task force study on Management and Administrative Staffing and the 1993 study by the Department of Justice's Management Division on Administration Services in the INS.

Copies are attached as requested.

Administrative Services in the  
Immigration and Naturalization Service

June 1992

U.S. Department of Justice  
Justice Management Division  
*Management and Planning Staff*

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TABLE OF CONTENTS

<u>Executive Summary</u>	i
<u>Introduction</u>	1
<u>Chapter I: Overview</u>	3
Organization of INS .....	5
Roles and Responsibilities for Providing Administrative Support .....	5
Regional Offices .....	5
The Regions Vary Significantly .....	7
Field Units .....	8
District Offices Vary .....	9
Views on Administrative Services .....	9
Current Improvement Efforts within INS .....	9
<u>Chapter II: Staffing</u>	11
Headquarters Staff .....	11
Regional Office Staffing .....	14
District Office Staffing .....	14
Problems and Approaches to Determining Needs for Administrative Staff .....	17
Our Conclusions About Staffing Needs .....	19
The Districts .....	20
Regional Office Staffing .....	23
<u>Chapter III: General Management Issues</u>	25
<u>Chapter IV: Conclusions and Recommendations</u>	28
Recommendations .....	28

Appendices

- A. List of Participants in Focus Groups
- B. List of Interviewees
- C. Regional Office Organization Charts
- D. Overview: Study of Field Office Support Staff Requirements  
(Federal Bureau of Investigation)

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## EXECUTIVE SUMMARY

The principal conclusion of this report is that the Immigration and Naturalization Service (INS) is significantly understaffed in the administrative area. In the last ten years INS has nearly doubled in size, while its number of administrative positions has actually decreased in absolute terms. During this same time period, the overall ratio of administrative to total positions has declined by almost half.

Understaffing is most critical in the INS District Offices. Just to keep up with day-to-day workload demands, a number of these Offices are "borrowing" program positions and personnel to perform administrative duties. Staffing needs at Headquarters and the Regional Offices are equally real, but less critical. The most immediate and urgent priority for Headquarters and the Regions is staff to handle the conversion to the National Finance Center payroll system scheduled for October 1992.

Lack of sufficient administrative staff is a major factor adversely affecting the level and quality of administrative services provided to support INS programs. Lack of staff stands in the way of other needed reforms to correct administrative shortcomings, including: the lack of clear, consistent and written guidance on administrative policies; a resource management process that is unduly complex, fragmented, and inflexible; poor communications; weak and uncoordinated management control and review functions; the lack of clarity that persists particularly in regard to the role and authority of Regional Offices; inadequate information on workload and performance; and inadequate and fragmented information systems.

To help remedy these problems, the report recommends that the total number of permanent full-time administrative positions in INS be increased at a minimum by 217 positions—34 at Headquarters, 89 at the Regions and 94 at the Districts. The report further recommends that INS adopt staffing guidelines agreed to by both INS and the Department; use these guidelines in calculating resource requests and in apportioning positions; and implement simplified workload and performance measurement systems to gauge how well the guidelines work.

In addition, the report recommends that INS undertake a variety of other improvement efforts including, but not limited to, issuing new administrative policy guidance, standardizing the organization and operations of its Regional Offices, revising its resource management process, and strengthening its management review functions. The report also urges that INS continue its efforts to implement Total Quality Management and to enhance its automated information systems capabilities.

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## INTRODUCTION

In February 1992 the Commissioner of the Immigration and Naturalization Service (INS) asked the Justice Management Division (JMD) to review the delivery of administrative services by INS, identify problems, and recommend improvements. This report presents the results of the JMD review. The review was led by the JMD Management and Planning Staff (MPS) with the participation of the JMD Finance Staff.

For purposes of this review, we defined "administrative services" as including the following functional areas: financial management (budget, accounting); human resources management (personnel, training, equal employment opportunity); and general administration (contracting, facilities, property management, general services). We also limited "administrative services" to those activities principally funded by decision units 5220 (administrative services), 5210 (executive direction and control), and 3270 (field management and support), all of which are under the purview of the Executive Associate Commissioner for Management. We explicitly excluded all functions related to information resources management (including records, automated data processing, telecommunications).

In addition, we narrowed the focus of our review to the following three key questions: (1) what are the roles and functions of INS Headquarters, Regions and field units in the delivery of administrative services; (2) what is needed in terms of the allocation of staff resources, particularly at the Region and District levels; and (3) what are the important factors affecting the quality, timeliness and level of services provided?

In doing our work, we attempted to build on the considerable work that has and is being done by INS itself in this area, including but not limited

to, the report entitled District Support Positions that proposes a model for District Office administrative staffing. We also participated in and reviewed preliminary products of an INS task force developing a similar model for Regional Offices. We reviewed a variety of other agency documents, budget submissions, and prior General Accounting Office and Department of Justice reports.

In order to help us frame the issues that would guide our subsequent work, we conducted preliminary interviews with key Headquarters officials. We then held two focus group sessions at the Commissioner's Conference in mid-March: the first with a panel of 12 District Office Directors, and the second with a panel of eight Border Patrol Chiefs. A list of the participants at these two sessions is found at Appendix A.

We made site visits to each of the four INS Regional Offices. We also visited nine District Offices (Los Angeles, San Diego, Dallas, El Paso, New Orleans, Kansas City, St. Paul, New York and Baltimore); four Border Patrol Sectors (San Diego, El Paso, New Orleans, and Swanton); and three Regional Service Centers (Laguna Niguel, Dallas, and St. Albans, VT). At INS Headquarters we talked to staff with major responsibilities in the administrative services area as well as the Associate Commissioner for Examinations, the Associate Commissioner for Enforcement, the Chief of the Border Patrol, the Director of Internal Audit, and representatives of the Office of Strategic Planning.

In order to obtain additional perspectives, we interviewed the Department's Procurement Executive as well as representatives of JMD's Budget and Facilities staffs. We also attempted to identify the experiences of other agencies both in the use of a regional structure and in the

development of staffing models. We consulted with representatives of the Bureau of Prisons and the Federal Bureau of Investigation, and, from outside the Department, the Internal Revenue Service and the Department of Commerce. In total, we interviewed more than 150 persons. A list of these persons is found at Appendix B.

Although INS responded quickly to our requests, there were some deficiencies in the available information that necessarily affected our work. For example, it was not possible to obtain comprehensive and reliable information on existing policies and procedures, including delegations of authority, since the INS Administrative Manual is inaccurate. In addition, it was not possible to obtain comprehensive and reliable workload or performance data, since the data generated by the INS principal statistical reporting system are widely recognized to be flawed.

The report is organized into four chapters. Chapter I provides an overview of INS — how it is organized and the unique environment in which it functions. Chapter II presents our findings related to administrative staffing needs. Chapter III discusses the major management issues other than staffing that affect the delivery of administrative services. Chapter IV summarizes our conclusions and recommendations.

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## CHAPTER I: OVERVIEW

**T**he ability of the INS to deliver administrative services effectively to its programs is inherently impacted by the turbulent and complex environment in which it works. It is also impacted by the way the Service has over time responded to this environment, the choices it has made, and the processes and traditions which it has developed.

**INS Mission Is Complex.** INS is an agency with a dual, sometimes contradictory, mission of enforcement and service. On the one hand, it deters and apprehends persons who attempt to enter the United States illegally; it enforces sanctions against employers who hire illegal immigrants; it investigates fraud and other violations of immigration laws; and it detains and deports illegal aliens. On the other hand, in its service role, it facilitates the legal entry of persons to the United States and processes applications and petitions for immigration benefits including naturalization and other matters related to citizenship. This diverse mission leads to an inevitable tension among the agency's varied programs over policies and resources.

**INS Has Little Control Over Its Workload.** In carrying out its mission, INS has little control over its workload. Over the last several years, this workload has spiraled upwards at an unprecedented rate. Population growth, particularly in poor, third world countries; the increasing ease of travel and communications; and political instability in other nations, have all combined to intensify demands to enter the United States both by legal and illegal means. INS has had to cope with this mounting workload while responding rapidly to changed circumstances and emergency situations. For example, the recent exodus of large numbers of Haitians fleeing their country and seeking political asylum in the United States required INS to respond quickly and redeploy its personnel in

order to process these claims expeditiously. This lack of control over its own workload and need to respond rapidly, have impeded INS' abilities to plan and to allocate resources efficiently.

**INS Is Geographically Widely Dispersed.** Although INS is directed by a Headquarters operation in Washington, D.C., the majority of INS personnel are located in widely scattered offices throughout the United States and abroad. *Figure 1* shows the locations of the four INS Regional Offices, four Regional Service Centers, seven asylum offices, 33 domestic District Offices, 21 Border Patrol Sector Headquarters, and nine Service Processing Centers. In addition, there are numerous sub-offices, ports of entry, Border Patrol stations and traffic check points, and other facilities, and three overseas District Offices.

**INS Has Grown Rapidly.** In the last six years, INS has been faced with implementing two significant changes to the nation's immigration laws — the Immigration Reform and Control Act of 1986 and the Immigration Act of 1990. IRCA, in particular, dramatically affected the Service assigning it responsibility for two major new programs — one providing legalization for certain aliens and one providing sanctions for employers hiring illegal aliens — and triggering major increases in resources.

**Investments In Infrastructure Have Lagged.** As INS programs have rapidly expanded, corresponding investments in infrastructure needs have failed to keep pace. Information systems, as a result, are inadequate. The lack of a more advanced automated information system's capability adversely affects the efficiency and effectiveness of administrative services as well as INS programs. --

**IMMIGRATION AND NATURALIZATION SERVICE  
MAJOR FIELD LOCATIONS**

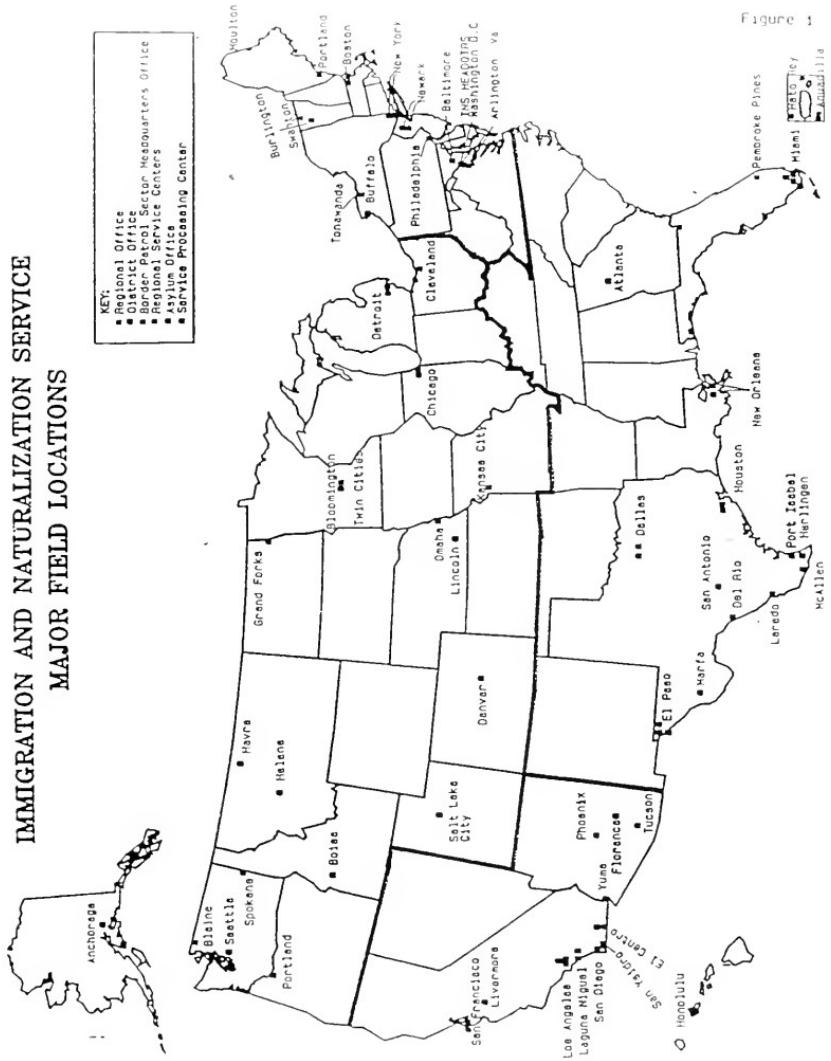


Figure 1

## **Administrative Services in the Immigration and Naturalization Service**

## Organization of INS

To better cope with this complex environment and reestablish central policy and program direction and control, the Commissioner of INS proposed a major restructuring of the Service just over one year ago. Approved by the Attorney General in April 1991 and put into effect the following July, the restructuring established direct reporting lines between INS Headquarters and the field for all operational programs. It ended the geographical separation that had previously plagued INS where regional commissioners had operated semi-autonomously.

*Figure 2* shows the official organizational structure of the Service. The Deputy Commissioner oversees all international refugee and asylum matters. Two Executive Associate Commissioners supervise the operations and management programs, respectively. The Executive Associate Commissioner for Operations directs INS' service and enforcement activities. Two Associate Commissioners — one for Enforcement and one for Examinations — report to him as do all District Directors and Border Patrol Sector Chiefs. The Executive Associate Commissioner for Management oversees all the management and administrative programs of the Service. Three Associate Commissioners report to her — one for Information Resources Management, one for Finance, and one for Human Resources and Administration. Four regional administrators head up the Regional Offices of the Office of Management. Assistant Commissioners — both on the operations and management side — serve as "program managers", that is, they are responsible for managing programs that fall within their area of responsibility, including allocating resources to the field.

Although the reorganization is officially "in place," a number of implementation details have not been resolved. Roles and relationships are still evolving. In part, this is because several top leadership posts have only recently been filled and others remain to be filled. Nevertheless, the

general sentiment expressed to us was that there has been considerable progress since the "shock" of the reorganization.

## Roles and Responsibilities for Providing Administrative Support

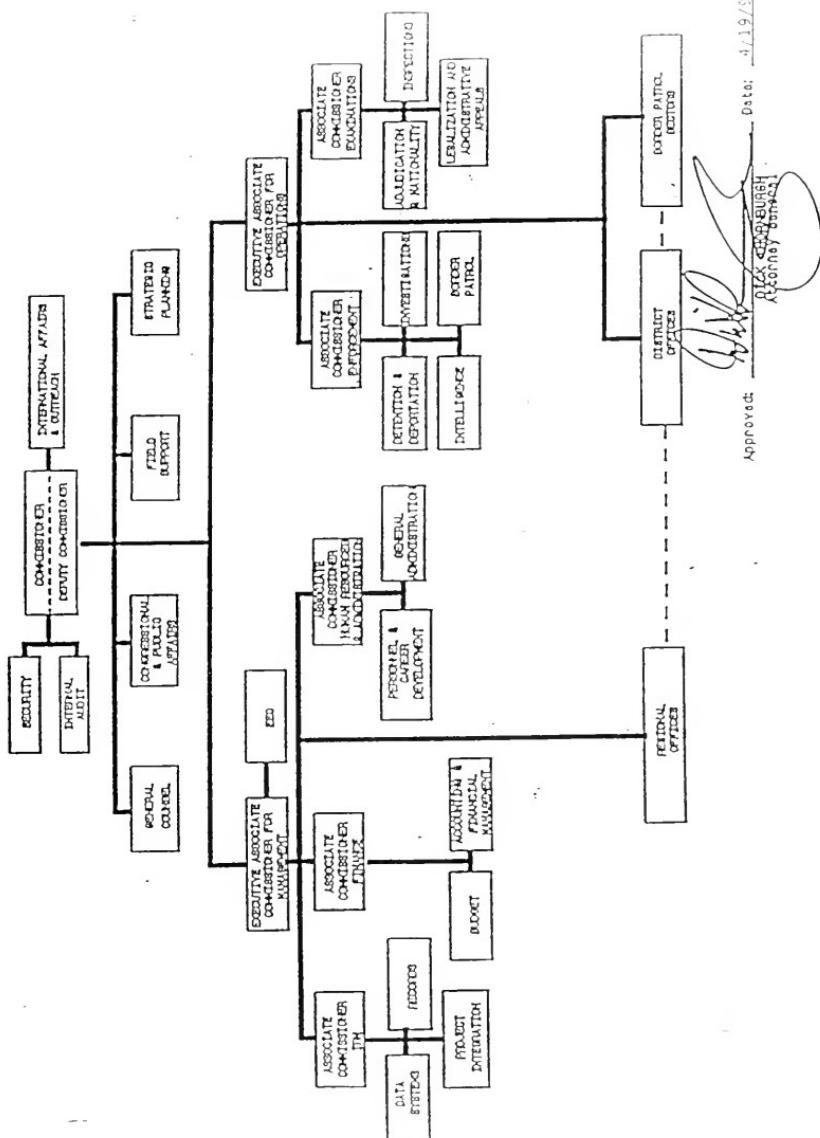
Headquarters, Regional and field offices all play roles in providing administrative services. As a general rule, Headquarters offices are responsible for all management and administrative policy functions. However, they also have substantial operational responsibilities. Under the direction of the Executive Associate Commissioner for Management, the Associate Commissioners have the following duties:

- \* The Associate Commissioner, Human Resources and Administration, plans, develops, coordinates and evaluates personnel, contracting, facilities and administrative support programs;
- \* The Associate Commissioner, Finance, plans, develops, coordinates and evaluates Service resource requirements and utilization including all financial management and budget formulation and execution activities;
- \* The Associate Commissioner, Information Resources Management, plans, develops, coordinates and evaluates all IRM programs including records management, telecommunications, electronics and related program areas.

## Regional Offices

The reorganization dramatically altered the mission, functions and configuration of the four INS Regional Offices. It stripped them of authority over operations and resources and recast them as administrative support offices. It replaced the position of Regional Commissioner with that of Regional Administrator under the

## IMMIGRATION AND NATURALIZATION SERVICE



direct supervision of the Executive Associate Commissioner for Management.

Today, the four Regional Offices are integral parts of the Office of Management. Their principal role is to provide services to the field units within their geographic areas and to monitor compliance with administrative policies and procedures. They are responsible for personnel, training, equal employment opportunity, budget, accounting, financial management, property management, procurement, automated data processing, records management, communications and program monitoring and evaluation. In addition, they perform certain public information and Congressional affairs activities under the direction of Headquarters.

The transition process has been difficult for the Regions. They have had to adapt to a changed, but as yet ill-defined role. They have had to struggle to find an appropriate balance between the support and monitoring aspects of their mission. In addition, they have had to forge new working relationships — both with their counterparts in INS Headquarters on the management side and with the INS field units they serve.

### The Regions Vary Significantly

*Figure 3*  
*- up date chart*

Figure 3 summarizes some of the key characteristics of each of INS' four Regions. Organization charts for each of the Regional Offices that were in effect at the time of our field work, are found at Appendix C.

Characteristics of INS Regions

	Eastern	Northern	Western	Southern
Total INS Employees*	2980	1710	4433	4617
Geographic Area	13 States Puerto Rico Virgin Islands	20 States	4 States Guam	13 States
Districts	9	11	5	8
Sectors	4	5	5	7
Service Processing Centers (Detention)	3	—	3	3
Regional Service Centers	1	1	1	1
Stations, Substations, Suboffices, Port of Entry, ETC.	67	136	69	103
Legalization Offices	1	4	9	6
Asylum Offices	2	1	2	2

\*On-Board Permanent Full-Time as of 3/92

Source: PACs 3/92

Comparisons among the Regions tend to be misleading, since the Regions vary in a number of ways. First and foremost, they service vastly different numbers of INS operational personnel. The highest numbers of operational staff are in the Western (WRO) and Southern (SRO) Regions; the lowest, in Northern (NRO) and Eastern (ERO). To the extent, then, that workload is a function of personnel served, the Regions face quite different levels of demand.

The Regions vary in other important ways as well. At the time of our review, each was organized and staffed differently and each did its work in slightly different ways. In some cases, there were also differences in the kinds of functions performed. These differences appear to reflect both the particular history and environment of a given Region as well as deliberate choices by INS Headquarters.

While the Regions have the same overall mission, and to a very large extent do the same things, they also have slightly different functional responsibilities. These variations are largely the result of Headquarters decisions to "remote" a certain function and concentrate work in one or more of the Regional Offices. For example, the Northern Region handles all bonds for the Western Region and the Eastern Region does the same for Southern. Similarly, the Southern Region handles all permanent change-of-station actions and Eastern takes care of all travel vouchers for Headquarters. Decisions to remote a function appear to make sense, particularly where there are economies to be achieved by specialization and consolidation. However, there can be downsides as well when the "losing" Region views the transfer as undermining its role and capability and/or when the field units become confused as to which office is in charge.

The Regions vary in how they work. For example, both the Northern and Eastern Regions have put out written guidance manuals to the field, whereas the Western and Southern Regions have not. Similarly, the Eastern and Southern

Regions have implemented more highly structured review programs than Northern and Western.

Each of the Regions delegates certain administrative authorities to the Districts and Sectors, but these delegations are not always consistent. For example, three of the four Regions have delegated GS 12 and below non-officer recruitment and selection authority to the field; the Southern Region, however, has capped its personnel delegation at the GS 8 level.

### Field Units

Field units (District Offices, Border Patrol Sectors, Regional Service Centers) provide their own administrative services within the authority delegated to them and coordinate with the Regional Offices. Functions not delegated to the field are usually performed by the Regional Office.

District Offices manage the delivery of the majority of INS programs and services at the local level. Border Patrol Sectors operate independently of the Districts. Regional Service Centers process applications for immigration benefits.

Field units perform a variety of primarily personnel, purchasing, and general administration activities. Personnel functions appear to consume the largest portion of time. Field units generally have authority to recruit and select at the GS 12 and below level; they qualify candidates, conduct rating panels, issue selection lists, set up interviews, and process new hires. They initiate and/or facilitate all other personnel actions (workers compensation claims, reviews of position descriptions, transfers, promotions, training requests, performance appraisals, etc.). They coordinate the awards, life insurance, health insurance, and retirement programs and leave schedules and regulations. They carry out other aspects of a personnel program (advising managers, counseling employees, processing

grievances, etc.). Non-personnel activities include maintaining property inventories; preparing and processing purchase orders and other obligating documents; coordinating issues related to facilities and equipment; operating imprest accounts; tracking obligations and expenditures; and monitoring utilization of FTE.

### District Offices Vary

Comparisons among the 33 District Offices can be equally misleading, since the Districts vary greatly in the magnitude of work they do, the size of their staff, and the general environment in which they operate. The smallest District is Omaha, Nebraska, with 31 filled permanent full-time positions as of April 13, 1992; the largest, New York with 920.

About one-third of the INS District Offices can be termed small in that they have fewer than 125 people. The majority (20) are mid-sized; they range from 125 to about 450 positions. Three offices — Miami, Los Angeles, and New York — are significantly larger than the others.

In the smaller Districts, administrative services are usually provided by an administrative officer. In Kansas City, for example, a GS 9 Administrative Officer reporting to the District Director provides a full range of support services for a District of 78 people. St. Paul, a slightly larger office, is staffed similarly. Baltimore, on the other hand, has a GS 12 Assistant District Director for Management (ADDM).

In the mid-size offices we visited there was also variation. In El Paso, a GS 11 Administrative Officer oversees general administration, personnel, security and records and information. Maintaining the funds obligation accounts is handled by the Director's secretary. In New Orleans, there is a person "on loan" from the Records Administration and Information Branch serving as Administrative Officer. In San Diego, there is a GM 13 Assistant District

Director for Management in charge of personnel, support services and records and information. In Dallas, there is a GM 13 Administrative Officer.

Los Angeles and New York both have Assistant District Directors for Management. In Los Angeles, the ADDM is a GM 15 who supervises a management branch handling personnel, support services, computer services, records and information, and security. In New York, the ADDM is a GM 14 with a similar range of responsibilities.

### Views on Administrative Services

Few persons we spoke to were satisfied with the quality and level of administrative support provided to INS programs. Many administrative staff feel overextended and frustrated by both their inability to provide better service and by the criticism they receive. Program personnel tend to be sympathetic; nevertheless, they, too, are frustrated by what they perceive as delays and inconsistencies in support.

External reviews over the past few years by the General Accounting Office and the Department of Justice have criticized INS administrative systems. Issues related to financial management, procurement, training and other administrative topics have been included under the Office of Management and Budget's definition of "High Risk Area" as applied to INS.

### Current Improvement Efforts within INS

INS is taking a number of steps to improve its management and administrative programs. One of the most important of these is to adopt a participatory and collaborative approach to conducting the business of the Service. The Commissioner has stated his intent that INS function as a team, and that traditional barriers and divisions be bridged.

One vehicle that INS is using to achieve this aim is a major Total Quality Management initiative being undertaken with contractor support. Under the rubric of TQM, INS is examining how it plans, how it communicates and how it measures performance. All INS senior managers have received TQM training; and "process action teams" have been established to work on particular issues, including staff coordination and long-term strategic planning. Furtherance of the Commissioner's TQM agenda is essential, if INS is to correct its problems.

One example of greater teamwork was the process by which the Service developed its 1994 budget request to the Department. Although participation by the Regions and field units was limited, the 1994 budget formulation process emphasized collaboration and integration, rather than isolated, program by program decision-making without consideration of interrelationships.

Within the Office of Management there is a commitment to both participation and planning. An annual plan for the Office of Management has been jointly prepared by Headquarters and Regional Offices that sets forth specific objectives and milestones for various improvement projects against which progress is being monitored. A long-term financial management strategic improvement plan is being developed with the participation of budget and financial personnel in Headquarters and the Regions as well as the Department.

These efforts are promising; they need to be nourished and expanded. They strike a common and encouraging theme of mutual commitment and shared responsibility.

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## CHAPTER II: STAFFING

**A**t present, INS staff providing administrative services are generally (although not always) funded under one of three decision units. Executive direction and control (5210) supports executive level, budget and public affairs staff in INS Headquarters and Regional Offices. Administrative services (5220) covers core administrative activities including personnel, EEO, procurement, accounting and general management staff in both Headquarters and the Regions. Field Management and support (3270) funds primarily District management positions (Directors, Deputy directors and their secretaries) and administrative personnel (generally, administrative officers, assistants, personnelists). It also supports a limited number of Regional Office staff. Each of these three separate accounts is managed by the Assistant Commissioner for General Administration. In 1992 there were a total of 910 Congressionally authorized permanent full-time positions under these three decision units.

Most people that we spoke to thought that the most significant factor affecting the delivery of administrative services in INS is lack of sufficient staff. Funding for administrative positions has lagged behind overall increases in INS programs. *Figure 4* shows that since 1984 INS has almost doubled — growing from 10,601 positions in 1984 to 17,976 in 1992.\* However, during this same time period the number of administrative positions has remained relatively constant. Although there have been slight fluctuations, the 1992 level of 910 positions is, in fact, more than 50 positions lower than the 1984 level.\*

The net effect has been to cut nearly in half the ratio of support to total personnel. *Figure 5* illustrates the steep drop from 9.2 percent in 1984 to 5.1 percent in 1992 (with a further decrease to 5.0 percent projected for 1993). In short, INS has fewer administrative people today than it had in 1984, and yet these people must provide services to about twice as many INS inspectors, investigators, and other operational personnel.

### Headquarters Staffing

As of April 1992, there were 987 permanent full-time administrative positions filled. Two hundred seventy (or 27 percent of these) were at INS Headquarters.

Many people we talked to at Headquarters stated that their offices were, in their judgment, short of staff. Among the needs that seemed most apparent to us were the following:

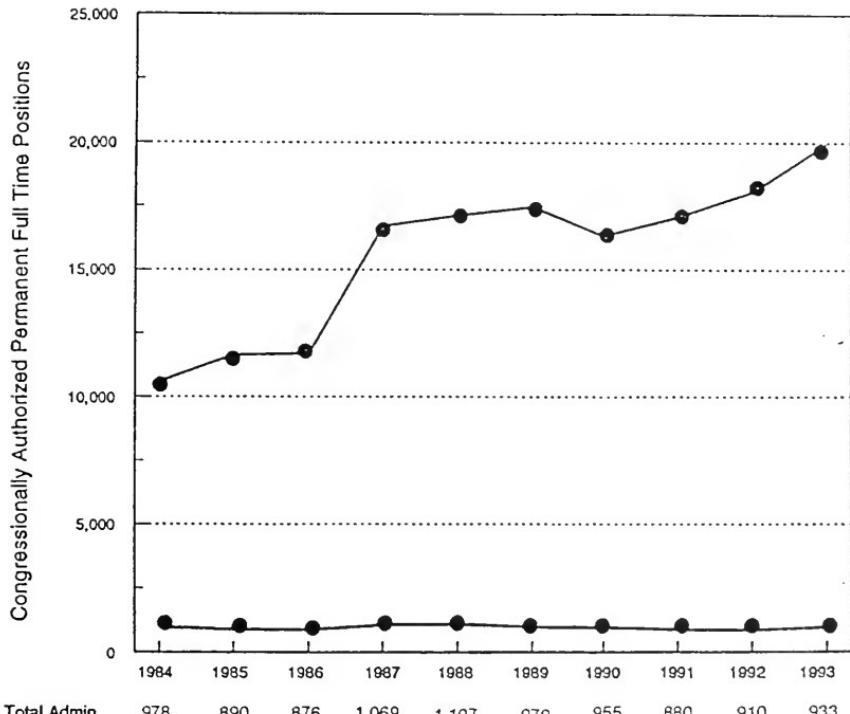
- \* Conversion to the National Finance Center (NFC). INS is scheduled to convert to the NFC system in October 1992. The conversion means that INS (Personnel) will be assuming responsibility for certain payroll functions that have previously been performed by the Justice Management Division Finance Staff. The added workload will impact on personnel staff at Headquarters and in the Regions. Many people we interviewed expressed concern about the conversion, since INS has failed to insure that it has the necessary resources to handle it efficiently. Although INS is requesting increases in its

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\* We used 1984 as a base year for two reasons: first it provided three years of data prior to the impact of the Immigration Reform and Control Act of 1986; and second, it gave us a full ten years (although 1993 figures are projections).

Figure 4

Immigration and Naturalization Service  
 Administrative Positions Compared to Total Positions  
 FY 1984 Through FY 1993



(Budget Codes 3270, 5210, 5220 Only)

Total INS Positions      10,601    11,649    11,694    16,693    17,117    17,461    16,328    17,052    17,976    18,740

Note: In 1989, 135 positions were transferred from INS to the new Office of the Inspector General along with audit and inspection functions. The INS reorganization reestablishes an internal audit function within INS.

Source: Data Supplied by  
 INS Special Projects Staff

FOCUS GROUP PARTICIPANTS  
March 17, 1992

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Gustavo De La Vina, San Diego, CA  
Thomas Leupp, Swanton, VT  
Ronald Dowdy, Tucson, AZ  
James Switzer, Spokane, WA

District Directors

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Mike Tominski, Harlingen, TX  
James Turnage, San Diego, CA  
William Carroll, Arlington, VA  
William Slattery, New York, NY  
Ron Sanders, Kansas City, MO  
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Hope Ortiz

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Faye Grey  
Thomas Feeney

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Don Looney  
Christopher Fowler  
Paul Gilbert  
Ellen Kwan  
Theresa Faloney

Laguna Niguel Asylum Office

Elaine Campbell

San Diego District Office

James Turnage  
Robert Jenson  
Ed Reyes  
Deborah Santos  
Janet Rusnell

San Diego Border Patrol

Kathleen Nelson  
Margaret Peters

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Walter Beller  
Rodney Bourasso  
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Thomas Pendergast  
John Clarke  
Donald Russell  
James Buckley  
Dennis Civiello  
Paul Novak  
Michael Devine  
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Donald Cundiff  
Arthur Cooper  
Conchetta Mason  
Barbara Blessing  
Nancy Kennedy  
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James Brown  
Mariam Luisi  
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Valerie McDonaldJustice Management Division, Budget StaffAlex Keenan  
Eric Wolff  
Barbara AthertonBureau of PrisonsKathy Hawk  
Dave CrockettFederal Bureau of Investigation

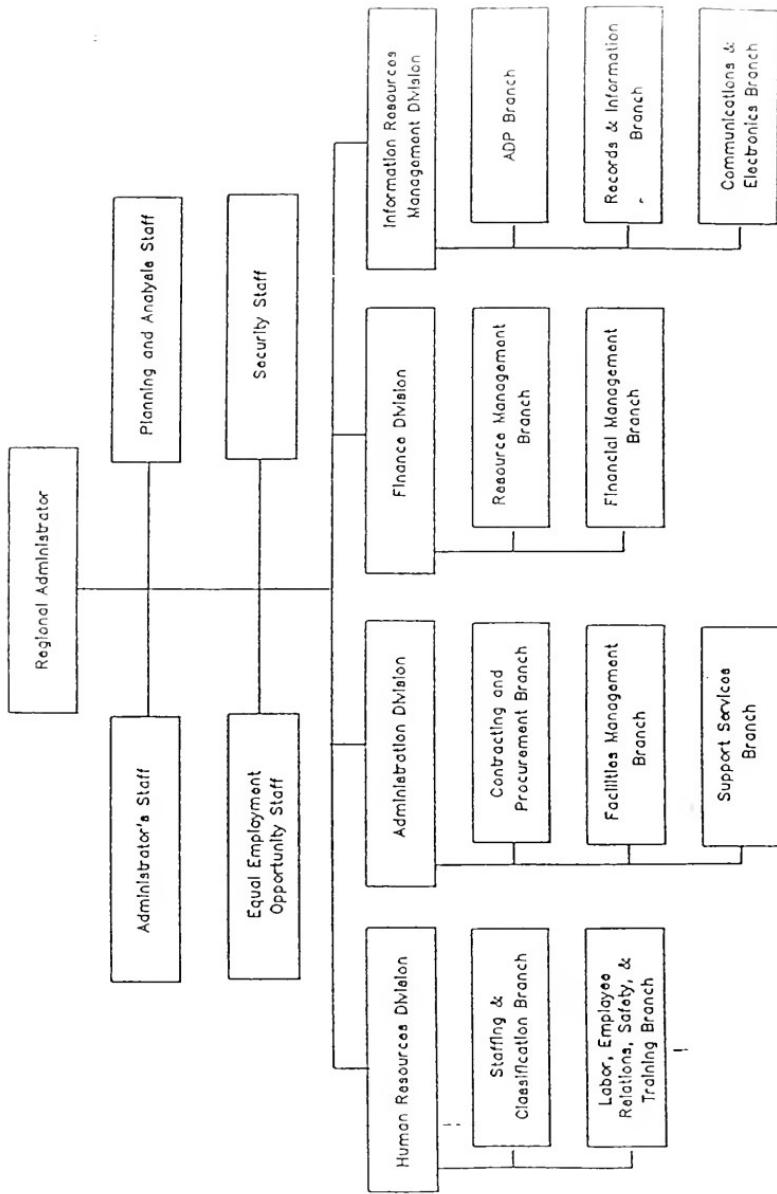
Linda Despeaux

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David Junkins

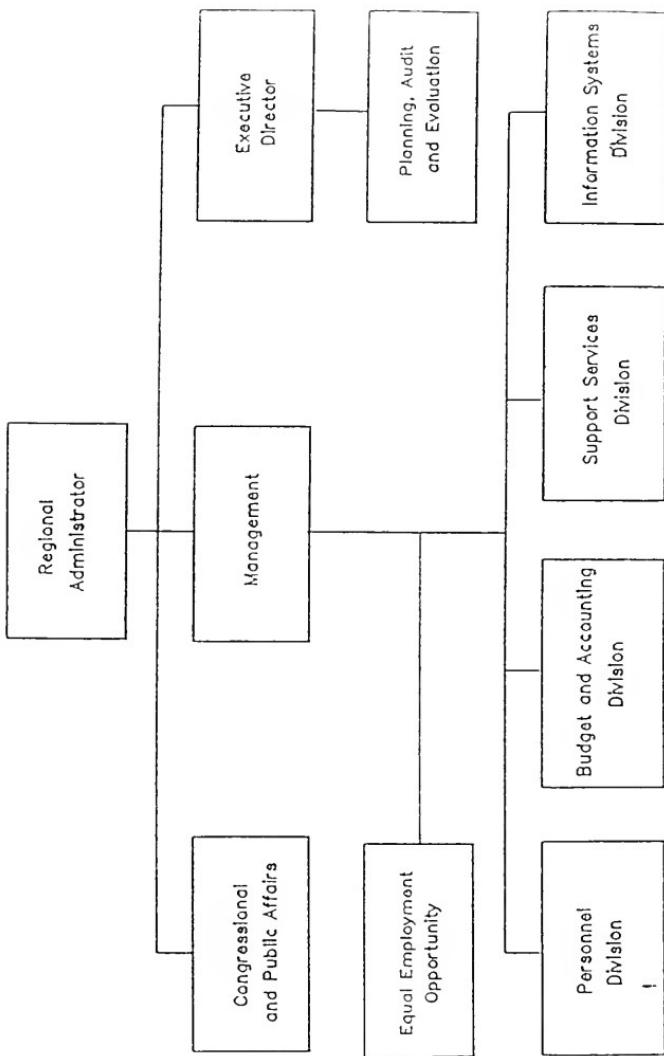
## Northern Regional Office

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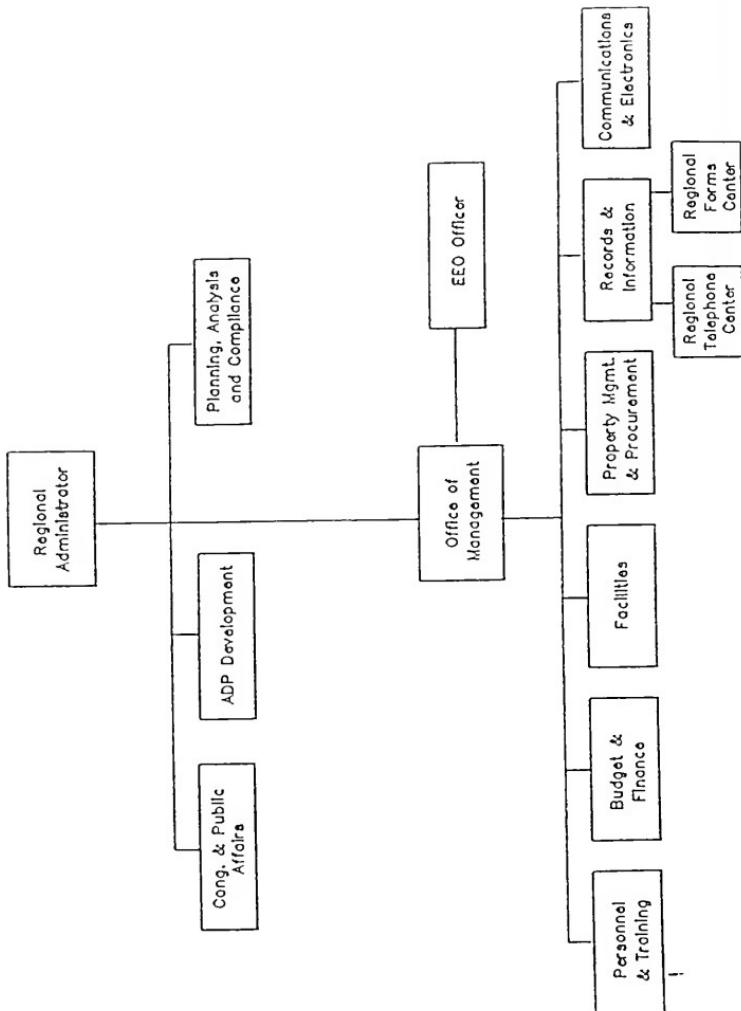
Western Regional Office

245



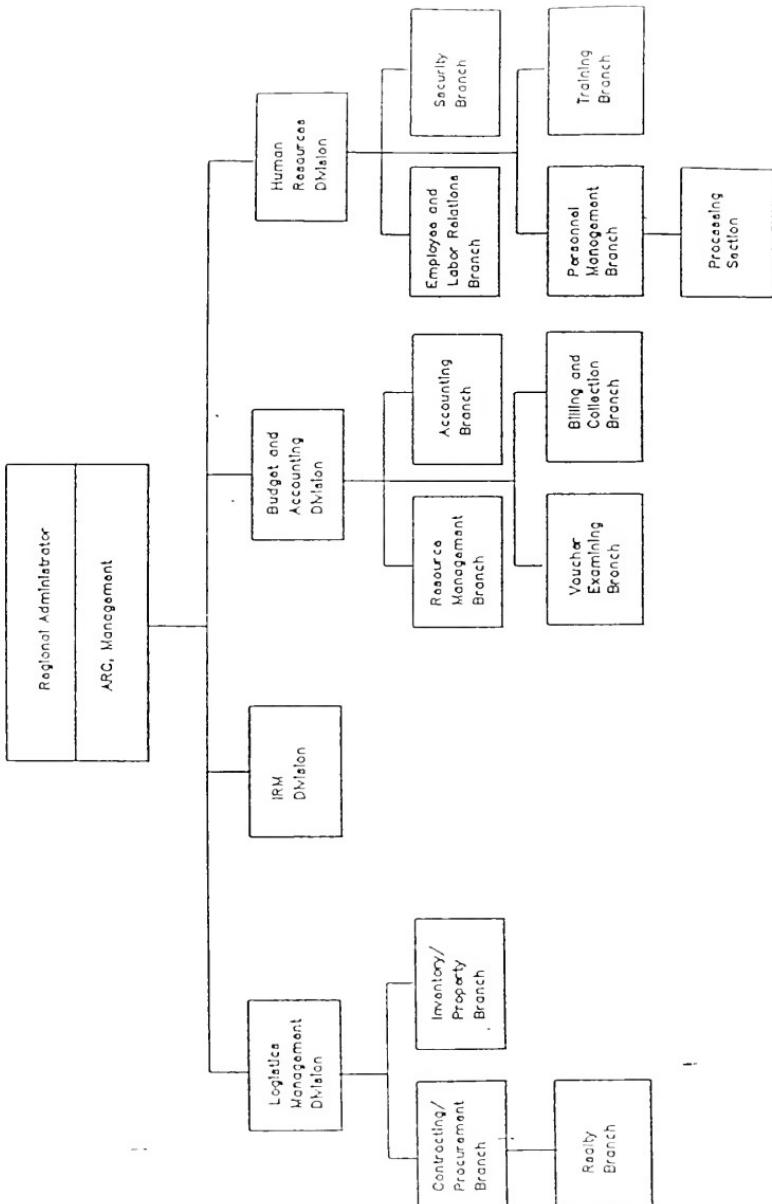
## Eastern Regional Office

246



# Southern Regional Office

247



#### Support Functions

- a. Conduct a job task analysis to identify the current functions performed by the support workforce in field office operations.
- b. Identify organizational variables which impact support functions. Analysis will include, but not be limited to, examining the impact of:
  - automation and emerging technology.
  - changes in the way we collect, retrieve, process, analyze, and manage information.
  - functions assigned from agent to support personnel.
  - establishment of support positions which require specialized knowledge, skill and abilities.
  - expanded scope/complexity of investigative programs.
  - new administrative requirements.
  - 24 hour a day operations.
  - performance of functions at off-site locations.
  - transfer of functions from headquarters.

#### Knowledge, Skills, and Abilities

- a. Identify future requirements for knowledge, skills, and abilities to perform support functions.
- b. Identify the future requirements for formal education and special work experience.

#### Recruitment

- a. Identify recruitment policies and strategies which will be needed to attract the workforce of the future.

#### Training and Development

- a. Identify training policies and programs which will be needed for support personnel in the future.

#### Personnel Management

- a. Identify personnel management policies and practices which may be needed to develop and retain a quality workforce in the future.

#### Field Office Structure

- a. Evaluate the impact of various organizational structures -- for management of support resources.

4/01/92

Overview: Study of Field Office  
Support Staff Requirements

## BACKGROUND:

As the complexity and scope of the FBI's investigative programs has increased, the role of field office support workforce has expanded and become more complex. One such change has been the increased use of field office support personnel to collect, analyze, interpret, and manage large quantities of physical evidence and evidentiary and intelligence information. The overall purpose of this study is to develop information necessary for long range planning for the support workforce for FBI field operations.

This study is being conducted by the Analysis and Reporting Unit, Budget Section, Administrative Services Section. Data is being collected from (a) interviews at headquarters, (b) interviews and focus groups at Cleveland, Salt Lake City, Dallas, Miami, San Francisco, Columbia, Ft. Monmouth, and Savannah; (c) document collection and review, (d) management information systems, (e) field survey instruments to collect quantitative data.

**PHASE I: REQUIREMENTS FOR THE FIELD OFFICE SUPPORT WORKFORCE**

The objective of this phase of the study is to examine the current role of the field office workforce and to identify how that role will change in the future. The future requirements for the workforce will be evaluated to determine the knowledge, skills, abilities, educational requirements, and special work experience which the support workforce must have to meet the needs of the field office in the future.

This information will be used to describe and justify future requests for increases in support staff and related non-personnel costs. This information is also essential for FBI managers who must plan and implement the necessary infrastructure for recruiting, developing, training and retaining a high quality workforce for FBI field operations. The following analyses will be done as part of this phase:

**Workforce Trends**

- a. Compare trends in United States and Federal workforce with those of the FBI.
- b. Analyze trends of field office support workforce from 1981 to 1991.

PHASE 2: PROCESSES FOR ESTABLISHING AND MANAGING STAFFING LEVELS FOR SUPPORT RESOURCES

This objective of this phase of the study is to evaluate the impact of current policies and procedures for establishing and managing target staffing levels for the support workforce in field operations. The following analyses will be done during this phase:

- (a) Evaluate processes and policies for identifying new requirements.
- (b) Evaluate the processes and policies for requesting increases in authorized staffing levels.
- (c) Evaluate processes and policies for allocating support staff resources to the field.
- (d) Evaluate processes for adjusting previously established authorized staffing levels.
- (e) Evaluate the impact of formal and informal policies, which evolve from these processes, to determine their impact on the flexibility of the SAC to respond to changing workload and organizational priorities.

PHASE 3: DEVELOP STAFFING ALLOCATION MODELS FOR FBI FIELD OFFICES

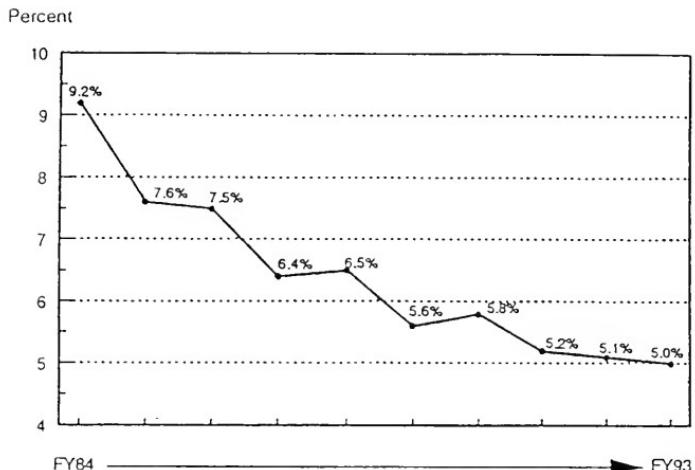
Historically, the FBI has used ratios, and other staffing standards and formula, to estimate and justify resource requirements. Development of new staffing standards and ratios is critical because of the many changes which are occurring in our requirements for administrative, clerical, investigative, and technical support.

The research and analysis done in this phase of the study will quantify requirements and be used to develop a model which can be used to predict future resource requirements and make allocation decisions.

For further information call Ms. Linda Despeaux at 324-4053.

Figure 5

**Immigration and Naturalization Service  
Administrative Positions as a Percentage of  
Total Positions**



Source: Data Supplied by  
INS Special Projects Staff

1994 budget submission, it has not as yet made sufficient provision for 1992 and 1993.

- Procurement and Contracting.** Several Department of Justice reviews have cited procurement as an area in need of improvement. INS has been especially criticized for its lack of adherence to competition and planning requirements. Equally important, in our judgment, is the fact that the "internal customers" within INS (Program Managers, District Directors, Sector Chiefs) do not appear to be satisfied with the services they are receiving and believe there are direct, adverse consequences for their program operations. It also appeared to us that contracting is an area where the workload data available are highly misleading; that is, they simply do not

represent the total function since INS uses a variety of mechanisms to procure goods and services. In fact, we think the use of these other mechanisms may be, at least in part, a consequence of lack of sufficient staff to handle normal contract actions.

- Policy Analysis and Management Review.** Policy analysis and management review functions appear to be underdeveloped within the Office of Management. In the opinion of most people, this is because of both a lack of staff and a tendency of day-to-day crises to drive out attention to longer-term concerns. The consequences, however, are significant. Everyone we spoke to in the Regions and the field complained about the lack of policy guidance from Headquarters. If INS is to

correct this situation, as well as focus on finding better ways of doing its work, it must have the analytic time and talent to devote to longer-term problem solving.

### Regional Office Staffing

Forty four percent of the total permanent full-time administrative positions filled as of April 1992 were at the Regions. *Figure 6* traces administrative staffing in the Regions from 1986 to the present both as an absolute number and as a percent of total staffing in the Region. What this Figure highlights is the sharp decline in administrative staff as a proportion of total positions. Only the Northern Region has stayed at a fairly constant ratio during this time period.

This Figure also points out the disparities that appear to exist among the Regions. Clearly, the Northern and Eastern Regions have consistently had higher ratios of administrative to total positions. These differentials can be explained, at least in part, by economies of scale that are generated as total staff increase.

*Figure 7* further illustrates these apparent disparities. It shows the distribution of on-board staff as of March 27, 1992, by major functional area. On face value, it seems that the finance function in the Western Region is disproportionately short-staffed compared to the other Regions; the Region compensates for this disparity by heavy reliance on temporary workers. In some cases, there are specific reasons for the apparent imbalance. For example, the high level of staffing assigned to security in the Western Region reflects a concerted effort by INS to correct long-standing problems in background investigations.

All of the Regions told us that they needed more staff, although the particular areas of need varied as did the level of urgency. In addition, all were concerned about the unknown impact of the NFC conversion.

### District Office Staffing

Twenty nine percent of the total permanent full-time administrative positions filled as of April 1992 were at the Districts. As noted earlier, these positions support both District management and administrative personnel.

*Figure 8* depicts the percentage of filled permanent full-time management and administrative (3270) positions to total positions in the nine Districts we visited from 1986 to the present. As can be seen, eight of the nine Districts experienced substantial declines in management and administrative support relative to total positions during this period.

All of the District Directors told us they were understaffed. In order to provide needed services, Directors have resorted to "borrowing" program positions. This is an unofficial practice that appears to be widespread. "Borrowing" seems to take two forms. In one form, a position is "given" by a program and filled with an administrative person. For example, the Inspections program in order to insure its work gets done, may agree to use one of its vacant positions for a personnelist. It is estimated that there are 50-75 administrative persons in the Districts supported by program accounts. ("Borrowing" also occurs at the Regions and Headquarters but to a lesser extent.)

The other form of "borrowing" that takes place is the ad hoc farming out of administrative tasks to program personnel. For example, in one District we visited, inspectors were required to spend a portion of their time filling in for secretaries. In the two large Districts we went to, security was a collateral responsibility of program personnel.

Inadequate support personnel causes a domino effect within the District. Investigators, examiners and inspectors are detailed to perform administrative duties just so they can accomplish their mission. But this takes them away

Figure 6

Filled Administrative Positions as a Percentage of Total  
Filled Positions in INS Regions (Oct 86 - Mar 92)

	OCT 86	OCT 87	OCT 88	OCT 89	OCT 90	OCT 91	MAR 92	% OF CHANGE IN STAFFING RATIO OCT 86 - MAR 92
<b>EASTERN</b>								
ADMIN	72	65	77	86	94	89	90	
TOTAL	1929	2046	2575	2748	2783	2941	2980	
% ADMIN	3.73	3.18	2.99	3.13	3.38	3.03	3.02	-19.03%
<b>NORTHERN</b>								
ADMIN	46	52	57	68	65	73	74	
TOTAL	1067	1049	1384	1524	1584	1664	1710	
% ADMIN	4.31	4.96	4.12	4.46	4.08	4.39	4.33	+0.46%
<b>WESTERN</b>								
ADMIN	69	68	76	103	103	95	93	
TOTAL	3114	2844	3570	3934	4156	4353	4443	
% ADMIN	2.22	2.39	2.13	2.62	2.48	2.18	2.09	-5.86%
<b>SOUTHERN</b>								
ADMIN	76	70	77	81	88	83	92	
TOTAL	3148	3089	4053	4360	4387	4480	4617	
% ADMIN	2.41	2.27	1.90	2.09	2.01	2.08	1.99	-17.43%

Note: The first two rows for each regional grouping are actual full time permanent employees on board during this time period.  
Administrative positions are those funded under 3270, 5210, and 5220.

Source: INS PACS 3/92

Distribution of On-Board Permanent Full-Time Regional Office Administrative Staff  
By Major Functional Area\*

	NRO	ERO	WRO	SRO*
Office of Regional Administrator	1 Detail 1 PMFA filled	5 PMFA filled	1 Detail 2 PMFA filled	1 Detail 1 OVHR
Office of Management	3 PMFA filled	3 PMFA filled	3 PMFA filled 1 OVHR	2 PMFA filed
Planning and Evaluation	3 PMFA filled	(no dedicated unit)	2 PMFA filed	(no dedicated unit)
EEO	2 PMFA filed	2 PMFA filed	3 PMFA filed	2 PMFA filed
Human Resources	(23) PMFA filed	(28) PMFA filed	(46) PMFA filed 1 OVHR	(43) PMFA filed 1 OVHR
Administration	12 PMFA filed	19 PMFA filed	21 PMFA filed	16 PMFA filed
Finance	29 PMFA filed	30 PMFA filed	22 PMFA filed	27 PMFA filed 4 OVHR

\* Excludes all IRM/ADP, Congressional and Public Affairs, and temporary positions. Others included regardless of decision unit/program element. Derived from March 27, 1992 PACS reports.

Figure 8

Filled Management and Administrative (3270)  
 Positions as a Percentage of Total Filled  
 Positions in Selected INS District Offices

DISTRICTS BY REGION	PERCENTAGE							% OF CHANGE IN STAFFING RATIO OCT 86 - MAR 92
	OCT 86	OCT 87	OCT 88	OCT 89	OCT 90	OCT 91	APR 92	
<b>EASTERN</b>								
• Baltimore	8.33	8.22	6.67	6.06	6.38	6.59	6.32	-24.13
• New York	2.45	2.36	1.88	1.82	1.77	1.67	1.63	-33.47
<b>NORTHERN</b>								
• Kansas City	13.33	15.79	8.82	7.79	7.79	7.79	7.69	-42.31
• St. Paul	5.19	6.58	4.26	3.88	3.54	3.45	3.33	-35.84
<b>WESTERN</b>								
• Los Angeles	4.03	6.11	4.3	3.59	3.43	2.93	2.6	-35.48
• San Diego	3.31	3.82	2.46	2.23	2.06	2.09	2.06	-37.76
<b>SOUTHERN</b>								
• Dallas	7.87	10.0	7.28	5.73	5.49	5.17	5.49	-30.24
• El Paso	3.06	3.83	3.36	2.88	2.79	2.89	3.33	+8.82
• New Orleans	6.31	7.92	4.64	4.19	4.14	5.26	5.08	-19.49

Source: INS PACS 3-92

from their operational responsibilities. In addition, because they are not trained or experienced in administrative work, they are not as productive as regular administrative staff.

No one we spoke to likes the practice of "borrowing." It is viewed as simply a necessary but undesirable expediency in order for the Districts to function.

Even with the practice of "borrowing" the Districts contend that they are in dire straits. Administrative Officers in several of the Dis-

tricts we visited appeared overextended and overwhelmed. A number of Directors lacked secretarial support.

#### Problems and Approaches to Determining Needs for Administrative Staff

One of the problems INS has is that it does not have an accepted method for determining its administrative services staffing needs. Over the years, INS has found itself in disputes with the

JMD Budget Staff over the most appropriate and reliable approaches to ground its resource requests. The Budget Staff has repeatedly asked INS to substantiate its requests with workload data.

Unfortunately, the fact is that at present INS does not have timely, reliable or useful workload information. There appears to be unanimous dissatisfaction with the G-23 system which is the primary statistical reporting system within INS. Criticisms include: too much non-essential data are reported; conversely, information on some time-consuming, labor intensive activities is missing; there is no consistency in definitions; there is no quality control on data entry; and there is no information on timeliness or quality. As a result of these problems, we could find no one who trusts or uses the administrative data in the G-23 system, other than to include it with the Spring Plan budget submission.

Even if INS had more useful and reliable information on how much work it does, it does not know how long it takes, or should take, to do the work. Thus, it could not translate units of work into resource requirements.

INS is not alone in facing the problem of how to gauge its needs for administrative support. There does not appear to be any "right" way to do it or some "magic number." Other agencies have struggled with the same question of how much is enough. Some do not use any formal method of answering this question; others combine general staffing ratios with experience, judgment and budget realities. The Bureau of Prisons, for example, has written guidelines for how to staff its institutions. These guidelines provide for a base level with increments to the base according to such factors as the size of the institution, remote facilities, number of facilities and the like. According to BOP, these guidelines were developed based on the experience of BOP officials, not detailed "time and motion" type studies. Similarly, the Drug Enforcement Administration, based on a 1984 study it con-

ducted, uses a ratio of one professional or administrative position for every 15 core positions and one technical or clerical position for every four total positions.

The Federal Bureau of Investigation has traditionally used an agent to support (non agent) ratio of 1/65. However, the Bureau is currently in the midst of an ambitious, nearly two-year project to identify its requirements for support staff and develop new staffing allocation models. The impetus for this project stems in part from a sense that the role of the support workforce has expanded and become more complex, and at the same time, that the overall levels of support have not kept pace with agent staffing. A brief overview of the FBI project is included at Appendix D.

A government-wide attempt to develop staffing ratios was conducted by the President's Council on Management Improvement in 1985. Although the PCMI did adopt the standards, it appears that they were never widely implemented. A Department of Commerce official who served as the project leader for the PCMI effort told us that to his knowledge only Commerce tried to put the standards into practice. He acknowledges that by now the PCMI standards are out-of-date.

INS has three basic choices:

- (1) It can continue on its present course of making staffing requests and allocations primarily based on past practice and case by case appeals.
- (2) It can embark on the kind of sophisticated and detailed study the FBI is doing.
- (3) It can adopt guidelines based on experience and practice and then measure work and performance against these guidelines.

We think the third option is the only practical one, although ideally over the long-run INS would also replicate the FBI effort, adapting it

to its own needs. In fact, INS is already attempting to develop guidelines for administrative staffing. An October 1991 report entitled District Support Positions proposes criteria for District staffing; a similar effort is underway to develop guidelines for the Regions.

In developing and adopting guidelines, it is vital that they be agreed to, both by the key players within INS and by the Department. One approach that INS might wish to explore is the use of a consensus-building strategy. For example, the Department of Commerce through its "Decision Analysis Center" offers at no charge group facilitation and computer analytical support skills to help Federal managers make decisions.

The advantages of guidelines is that they provide a rationale for requesting and allocating resources. They insure equity and consistency in staffing decisions. They provide a foundation, and, hence a basis for measurement and comparison. As guidelines, they can be applied flexibly and changed based on experience.

However, it is important that INS not only adopt guidelines, but also develop and implement a system for measuring administrative workload and performance that is reliable, useful, and relatively simple. One without the other is not acceptable. At present, there is no agreement within the Office of Management regarding the kind of data to be collected or how to collect it.

### Our Conclusions About Staffing Needs

We agree that INS is understaffed in the administrative area. Even without good workload data, it seems apparent that an almost 50 percent drop in the proportion of administrative support to total positions is precipitous. While there are other factors that contribute to INS' problems in the administrative area, as will be discussed in the next section of this report, lack of sufficient

staff is a major one, and one that stands in the way of other needed reforms.

We strongly support on-going efforts of INS to develop guidelines that will provide a basis for staffing requests and allocations. We believe that INS itself is in the best position to develop these guidelines, based on the experience of its own staff. The most important attribute of these guidelines must be that they are accepted and agreed to by both INS and the Department as reasonable, not that they have some purportedly objective validity. As INS improves its measurement systems, which we think it must, these guidelines can be tested and modified.

There is considerable evidence that the most reliable and powerful predictor of administrative workload is simply the number of people served. Most of the people to whom we spoke both within INS and at other agencies, indicated that there is a fairly direct correlation between the numbers of administrative people needed and the number of total people in the organization. What is more debatable is what that relationship should be. Here the experience of other agencies is not particularly helpful, since they have different missions and organizational structures and use different definitions of "administration." For example, we compared the number of persons in selected administrative job series as a percentage of total employees in INS and the Bureau of Prisons (BOP). We selected BOP for comparative purposes because it, too, has a regional office structure. As of April 1992, BOP had 9.9 percent of its 22,297 employees in these selected administrative job series, while INS had 5.9 percent.

We think, based on history, that a reasonable overall target for total administrative staffing in INS would be about eight percent of total positions. In the immediate years preceding IRCA and big jump in INS resources, the INS-staff ratio ranged between 9.2 percent and 7.5 percent. We think it makes sense to restore INS approximately to the balance of the pre-IRCA years and would tilt toward the lower end of the

range. The eight percent target is not "cast in stone"; it is just that, a target, that can be adjusted based on experience.

Specifically with reference to the NFC, we agree that INS requires additional support. Under the existing Justice payroll personnel system, the Finance Staff, JMD, devotes 15.75 workyears to INS. Under the NFC system, workload will be transferred to 1) INS Personnel Offices, 2) the National Finance Center and 3) automated through the NFC system. The Finance Staff estimates the distribution of work currently performed as follows: transferred to INS Personnel Offices (7.75 Workyears); automated through the NFC system (3.00 Workyears); and transferred to the NFC (5.00 Workyears).

Because these functions are being decentralized from the Finance Staff to the five Personnel Offices within INS, more than 7.75 workyears will be needed. This is due to economies of scale working in reverse. In addition, there is the need for a temporary increase of staff associated with the learning curve of implementing a new system. Therefore, we recommend an initial allocation of 18 positions (with four of these allocated to Headquarters and the others to the Regions) with a reduction to 14 after implementation. We do not anticipate a reduction in Headquarters staff, since Headquarters will have an on-going responsibility for training, guidance and trouble-shooting.

In respect to Headquarters procurement and contracting, based on our interviews we suggest an addition of about 10 positions. This increase would significantly strengthen the procurement staff and should, in our judgment, enable it to correct weaknesses and deficiencies that have been identified by the Procurement Executive and others.

We recommend an increase of about 20 positions to bolster policy analysis and management review functions within the Office of Management. These positions would be allocated to either existing or new analytic units; at least 4

of the positions would be to support INS implementation of requirements of the Federal Managers' Financial Integrity Act and Office of Management and Budget Circular A-123, Management Controls.

### The Districts

Although there are arguments for staff increases throughout INS, we believe that the most critical and pressing needs are at the District level. If the Districts are to function efficiently, and if program positions and program personnel are to be used for the purposes intended, then it is vital that the District be "made whole."

The October 1991 INS report on District Support Positions outlined the needs of the Districts and recommended an approach for staffing based on core levels of management and administrative positions, with additions over and above the core based on numbers of permanent full-time positions served. One additional position was allocated to each District with a Service Processing Center.

We support the general approach set forth in this report, as did the District Directors we queried about it. Nevertheless, we would suggest some minor variations in how administrative support (not District management) positions are allocated. For District Offices under 50 persons, we would allocate two positions. For all offices over 50 persons, we would assign a number equivalent to 2.5 percent of the total positions in the District.

*Figure 9* shows what would happen if our approach were used and contrasts it with the numbers recommended in the INS study as well as current on-board levels. Under both the INS proposal and ours, the total number of support positions in the Districts would increase substantially. However, our proposal would slightly decrease the total number recommended for administration from 220 to 203. More importantly, our proposal would shift

Figure 9

## Proposed Management and Administrative Staffing for District Offices

District	INS Proposed 3270 Mgmt/Admin*		MPS Proposed 3270 Mgmt/Admin**		On-Board 3270***
Omaha	3	2	3	2	3
Anchorage	3	2	3	2	3
Portland, OR	3	2	3	2	3
Helena	3	2	3	2	3
Cleveland	5	2	5	2	6
Kansas City	5	3	5	2	6
Baltimore	3	3	3	2	6
Denver	5	3	5	3	6
St. Paul	3	3	3	3	4
Philadelphia	5	6	5	3	9
Atlanta	5	6	5	4	8
Portland, ME	5	6	5	4	9
Washington D.C.	5	6	5	4	8
New Orleans	7	7	7	4	8
Dallas	5	6	5	5	9
Houston	3	6	3	4	6
San Juan	6	7	6	5	9
Detroit	4	6	4	5	6
Newark	4	6	4	5	7
Seattle	4	6	4	6	9
Boston	4	7	4	6	12
Honolulu	6	7	6	5	8
San Antonio	4	7	4	7	5

Figure 9 cont.

District	INS Proposed 3270 Mgmt/Admin*	MPS Proposed 3270 Mgmt/Admin**	On-Board 3270***
Harlingen	4	8	5
El Paso	6	8	8
Phoenix	10	9	10
Buffalo	6	8	9
Chicago	8	8	18
San Diego	14	10	10
San Francisco	10	10	17
Miami	8	16	12
Los Angeles	4	16	19
New York	4	16	12
TOTAL	164	220	273

\* Recommended management and administrative staffing in the report District Support Positions October 1991 (as corrected March 1992)

\*\* Based on 2.5 percent of total District PMFAs filled as of 4/13/92

\*\*\* PACs 4/13/93

more resources into the larger Districts. We favor this shift, because we believe, based on our visits, that the needs are most intense in the larger Districts. Moreover, we believe that these larger Districts should be increasingly self-sufficient.

It is difficult to assess District needs in part because the 3270 account also pays for a number of Regional Office positions. This problem will soon be resolved, since at the suggestion of the Office of Management and Budget, the Department has proposed that these three decision units (5210, 5220 and 3270) be merged into a single "Management and Administration" pro-

gram. This will also increase flexibility in moving resources.

More importantly, but also longer-range, we think that INS should be moving towards handling the funding of District management and support positions similarly to the way it does management and support for the Border Patrol; that is, place all costs of running a District Office under the program decision units. This would recognize that the true cost of a program includes the management and administrative support necessary to run it; provide a richer resource pool from which to fund management and administration; and increase the flexibility of the District Directors in managing their

resources. Such a transfer, however, should occur only when INS has determined its management and administrative staffing guidelines for the Districts.

### Regional Office Staffing

We think that the needs of the Regional Offices for staff increases are real but less critical. While some additions appear to be warranted, it may be equally important to adjust the allocation of resources among the Regions. It seems to us that on the whole, a greater share of resources should go towards the Western and Southern Regions.

As Figure 6 shows, the staffing ratio in the Regions has ranged from a low of below two percent to a high of almost five percent. We believe that a reasonable starting point, based on these past figures, is to use as a rough gauge an administrative ratio of 2.5 percent. This would

peg staffing at slightly below the ratio that currently exists in the Eastern Regional Office and slightly above that in the Western and Southern Regions. It would most adversely affect the Northern Region.

To compensate, we would add to the staff complement of each office a number of core managerial and general staff positions as follows:

Office of Regional Administrator	3
Office of Management	3
EEO	2
Planning/Evaluation	2
Security	2
Public Information	2
Assistant Administrators	6
<b>Total</b>	<b>20</b>

Figure 10 shows what would happen to the staffing levels of each Region under this approach. Overall, it would lead to a significant

Figure 10

### Proposed Regional Office Administrative Staffing

	CURRENT ON-BOARD ADMINISTRATIVE POSITIONS (MARCH 92)	2.5% OF TOTAL ON-BOARD POSITIONS			PROPOSED ADMINISTRATIVE POSITIONS	
		CORE				
ERO	90	20	+	75		95
SRO	92	20	+	115		135
NRO	74	20	+	43		63
WRO	93	20	+	111		131
TOTAL	<u>349</u>					<u>424</u>

Note: Administrative positions are those funded under 3270, 5210, and 5220.

All positions are permanent full-time.

Source: INS PACS 3/92

increase in total permanent full-time positions over the current on-board level and would reallocate these positions among the four Regions, shifting more to the Western and Southern Regions. It should be noted, however, that these allocations would have to be adjusted to reflect the particular financial management responsibilities assigned to Eastern and Northern.

In conclusion, we support significant increases in INS administrative staff at Headquarters, the Regions and the District Offices. We believe the highest priority area of need is at the District Office level, as well as Headquarters and Regional Office staff to handle the NFC conversion.

Based upon an eight percent ratio of administrative to total positions (which we think is reasonable), INS would require an increase of more than 500 administrative positions over its 1992 authorized level of 910. While we believe that an add-on of this magnitude is defensible, we recognize that it is improbable within the current fiscal climate. Therefore, we recommend that at a minimum administrative staff be increased by 217 positions. We specifically propose the following increases over current (March 1992) on-board staffing:

	On-Board	Recommended Increase
District Offices	273	+94
Regional Offices	349	+89 (includes 14 for NFC)
Headquarters	270	+34 (includes 4 for NFC)
Total		217

These increases would provide staffing to the Regions and Districts at a ratio of about 2.5 percent administrative to total positions with

additional core and management slots. They would alleviate the current need to "borrow" program positions and would provide sufficient support for the NFC conversion. In addition, the increases would provide some relief for particularly critical Headquarters needs. They would bring administrative staffing up to about 6.3 percent of total positions, a level still well below the eight percent target.

It should be stressed that we did not look at all Headquarters functions in enough depth to recommend a specific staffing level. We believe that increases are probably warranted in a number of other areas, especially property management. Moreover, it should be stressed that the recommended increase of 217 represents our calculations of what is required for INS to keep up with its current workload and that any new improvement initiatives may very well necessitate additional staff. For example, we are aware that the INS strategic financial management improvement plan calls for an increase of 18 positions. Therefore, 217 is, in our judgment, a conservative figure.

## CHAPTER III: GENERAL MANAGEMENT ISSUES

**A**dditional administrative staff is part but not all of the answer. While we support staff increases, we also think it is imperative that INS move forward systematically and speedily to resolve a number of management issues that impact on the delivery of administrative services. Each of these is discussed briefly below:

- \* **There Is A Lack of Clear, Consistent, Written Administrative Policy.** The INS Administrative Manual is woefully obsolete to the point of being largely useless. Everyone we spoke to at the Regional Offices and field units complained about the lack of policy guidance from INS Headquarters. They feel that they are "on their own," charged with implementing policies that are ill-defined and leave them vulnerable to being second-guessed.
- \* **Resource Management Is Complex.** Resources within INS are allocated and managed by programs and geographic location. There are 18 distinct programs, including the three that presently fund administration. There are two key "players" in terms of resource management — the program manager on the operations side and the budget official in the management side. However, primary authority for budget formulation and execution rest with the Headquarters program manager; the budget official, whether at Headquarters or the Region, typically only recommends changes. As a result District directors are forced to enter into a series of program-by-program negotiations with the Headquarters managers in order to resolve funding issues. They have no authority or discretion to shift funds among programs in accord with what they perceive to be the priority needs of the District.
- \* **District as well as Regional Office representatives dislike the designation of certain positions as "active" or "inactive," believing that it unduly restricts their flexibility by requiring that they obtain Headquarters approval prior to filling a position. They want to be given an FTE allocation and then provided the authority as well as the responsibility for staying within that allocation. Headquarters appears to be moving in this direction, but is hesitant to give up position control at this time.**
- \* **Communications Are Poor.** Nearly everyone thinks that communications need to be improved. This was also a conclusion reached by participants in the TQM training sessions. Although persons in the Regions and field indicated that there had been progress, it is clear that more needs to be done.
- \* **The Authority of Regional and Field Offices is Unclear.** There is considerable confusion about the authority of the Regions vis a vis the field. For example, some believe that the Regions continue to have the authority to block personnel actions, particularly where they believe a field unit is exceeding its FTE allocation. Others believe that the Region only has the authority to "red flag" an issue to INS Headquarters. Similarly, some believe that the Regions continue to have, or should have, the authority to withhold or alter fund allocations to the field while others contend that the Region's job is to monitor and raise issues only. The Regions, as well as everyone else, need to know precisely what their authorities are and are not.

- \* There Is A Lack of Regional and Field Participation in Decision-Making. Both Regional and District Offices have generally not been significantly involved in the formulation of budget requests; their role is primarily limited to budget execution. This approach may prevent INS from requesting needed resources for activities and events which are expected to occur in varying field locations, but of which Headquarters program managers are unaware. Similarly, it appears that Regional and District Offices have not been given an opportunity to participate as much as they would like in the design and development of automated information systems. Many persons with whom we met indicated that this lack of participation is beginning to change under the current leadership.
- \* Management Control and Review Functions Are Weak And Not Coordinated. At present, INS lacks a Servicewide system for identifying management issues and developing and monitoring the implementation of corrective actions. Its implementation of the management control system required under the Federal Managers' Financial Integrity Act and Office of Management and Budget Circular A-123 has been weak. Moreover, INS lacks a coordinated agenda for performing internal management reviews on administrative matters. Headquarters management offices perform occasional reviews of the field; the Regional Offices also carryout a review function, although in different ways. There appears to be little coordination, overall schedule and guidelines, or follow up mechanism for these reviews.

One of the consequences of this lack of a formal system is that INS does not drive its own management improvement agenda; rather, issues are imposed as a result of external reviews. Thus, for example, none of the issues included in the Attorney General's 1991 Report on Management Control pertaining to INS was identified by INS initially.

Each resulted from reviews by the Department or the General Accounting Office. Over the past two years, the Department has had to return to INS its management control report because it failed to address issues identified by these outside sources. Without its own capability for identifying and correcting management issues, INS cedes control over its management improvement agenda to others and weakens its credibility with both the Department and others.

- \* The Relationships Between Regional Offices and the Field Are Uneven. Most of the people we spoke to in the field believe that the performance of the Regions needs to be improved and that the Regions need to be more customer and service oriented. Complaints focused on delays, inconsistent advice, and lost mail.. In a few instances, the relationships appeared to be strained. Lack of certainty over the role and authority of the Region probably adds to this tension. Most people supported a stronger Regional Office role in providing training and technical assistance to the field.
- \* Regional Offices Are Inconsistent. Regional Offices are organized differently, staffed differently, and operate differently. Although there is no reason why each Region must be exactly the same, the lack of standardization is an obstacle to improved performance. It impedes communications between Headquarters management offices and their Regional Office counterparts; encourages jealousies and bickering; confuses the field; and makes it difficult to insure that resources are properly and fairly allocated.

As part of its overall reorganization plan, the Office of Management is moving toward greater standardization of its Regional Offices. It has proposed a uniform structure and statement of mission and functions that will more closely align them with Headquarters. As part of a separate effort to update the Administrative Manual, it is drafting standard

administrative delegations to the field that are intended to largely parallel those already issued to the Regional Service Centers.

- **Functional Responsibilities Could Be Sorted Out More Clearly.** One of the reasons why it is difficult to determine who does what, and why workload data can be misleading, is that Headquarters, Regional Offices and field units all tend to handle aspects of the same function and process. For example, a field unit initiates and issues purchase orders up to certain amounts, but the Region also has a responsibility for entering the purchase order data into the accounting system. Similarly, the field can initiate certain personnel actions, but these must be processed by the Region. In addition, Headquarters, Regional Offices and field units all perform a full range of operational functions, only for differing client groups and with differing levels of authority.

Depending on the availability of people, equipment, and systems, it would make sense over the long run to transfer the transaction processing activities that now occur at the Region to the field, so that actions can be completed in one step and with greater speed. As Regions do less routine processing, they would be able to enhance the technical assistance, training and review functions that most people think they should do more of.

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## CHAPTER IV: CONCLUSIONS AND RECOMMENDATIONS

To sum up, we came to the following principal conclusions:

- \* Overall, INS is understaffed in the administrative area; over the last ten years the ratio of administrative support to total positions has dropped by almost half.
- \* Understaffing is most critical in the District Offices, but is also evident at Headquarters and the Regions.
- \* Because it is understaffed on the administrative side, INS is using program positions to perform administrative tasks.
- \* Staffing requests and allocations for the most part have been based on past experience and case by case appeals; no guidelines or other rationale have consistently guided these decisions. As a result there are inequities and inconsistencies.
- \* Workload and performance measurement systems are inadequate.

### General Management

- \* INS lacks clear, consistent, and written guidance on administrative policies.
- \* Resource management in INS is unduly complex involving too many "players" and too many decision units; fragmenting decision-making; and restricting field flexibility.
- \* Management control and review mechanisms are weak and uncoordinated; more needs to be done to implement fully the A-123 management controls reporting system and to co-

ordinate the review functions that are currently in place.

- \* The mission, functions, and authority of the Regional Offices require further clarification.
- \* Regional Offices currently vary in how they are organized and staffed and how they do their work; greater standardization would help Headquarters and Regional Office communications as well as relations with the field.
- \* A number of field units are not satisfied with the services they receive from the Regions; they complain about delays, inconsistencies and lost mail.

### Recommendations

1. INS should substantially increase the number of positions providing administrative support. At a minimum, the number of administrative positions should be increased by about 217. INS should give highest priority to increases for: (a) District Office management and administrative support needs; and (b) Headquarters and Regional Office staff to handle conversion to the National Finance Center payroll system. INS should work closely with the Department, especially the JMD Budget Staff, in requesting and justifying specific increases as part of the 1994 budget formulation process. In addition, INS should work with the Department in requesting a reprogramming action to meet its most critical needs. INS can not afford to wait until 1994 to redress the current staffing balances that exist.
2. INS should adopt guidelines agreed by both INS and the Department for administrative staffing at the Regional and District Offices and

use these guidelines in calculating resource requests and in apportioning positions. INS should measure its work and performance in order to refine and adjust these guidelines over time.

3. INS should request a reprogramming that would transfer costs for funding District management and administrative positions from the Office of Management to the Office of Operations, so that the program decision units bear these expenses, as is now the case with the Border Patrol. Such a transfer would provide a richer pool of resources for funding District needs, and recognize that the true cost of a program includes the management and administrative support necessary to run it. However, it should occur only after INS has determined its management and administrative staffing guidelines for the Districts.

4. INS should work with the Department (the Budget Staff) in accomplishing specific resource management initiatives including (1) reducing the number of decision units; and (2) developing selected (S-8) meaningful measures of administrative workload and performance.

5. INS should develop clear, consistent and written policies on funds control which reduce the number of players in the process; clearly define their roles and responsibilities; and allow a higher degree of flexibility to move resources.

6. By 1993 INS should fully implement the policy of assigning Full Time Equivalent (FTE) management authority and responsibility to the field and eliminate the practice of designating positions as either "active" or "inactive."

7. INS should finalize the pending reorganization of the Office of Management as soon as possible so that mission, functions and authority are clarified and so that Regional Office organizational structures are standardized. INS should publish and distribute a guidebook for INS describing the mission and organization of

the Office of Management and providing names and phone numbers of key personnel.

8. INS should implement fully the management evaluation and reporting system required under the Federal Managers' Financial Integrity Act and Office of Management and Budget Circular A-123. INS should use this system as a tool for identifying and resolving management issues. This would help INS management find the full range of issues, take control over corrective actions, and prioritize resource requests. It would also help restore the credibility of its management system.

9. INS should develop a coordinated annual management review agenda to insure that all field units are reviewed at least once every three years for compliance with administrative policies and procedures. Regional Offices should have the lead responsibility for reviewing field units within their Region, but should insure that review teams include both Headquarters and Regional Office personnel.

10. INS should adopt an accelerated schedule for revising and reissuing its Administrative Manual. Ideally, a draft should be completed by the beginning of FY 1993.

11. INS should continue and enhance its efforts to improve its administrative processes by tapping the ideas and experiences of its workforce, particularly its Regional and field personnel. The use of task forces and conferences are good starts; these conferences could be used as forums for highlighting "best practices," including possibly those of other agencies.

12. Regional Offices, as well as Headquarters management offices, should increasingly stress their customer service orientation. As part of this process they should ask their customers, the field, to give them feedback on how they are doing and what they could do to improve. A formal "report card" is one kind of possible feedback mechanism.

13. INS Headquarters should continue its efforts to involve the field in decision-making. Specifically, it should insure that the Regions and the field units participate in budget formulation processes as well as planning for systems or other initiatives.

14. INS should continue to give priority to two key initiatives that directly impact on administrative services: Total Quality Management and Information Resources Management.

## RESPONSES OF SHIRLEY S. CHATER TO QUESTIONS SUBMITTED BY SENATOR SIMPSON

*Question 1.* In your testimony, you state that neither the 800 number nor the local offices have the capacity to handle large numbers of requests for verification. What level of expansion would be required to enable the needed volume of requests to be handled?

Answer. We estimate there are about 59 million new hires per year, based on a comparison of the number of W-2s against the number of employees, adjusted for people who hold two jobs. If every one of the 59 million new hires required a call to Social Security to verify the SSN, the volume of calls would roughly equal the volume currently handled by SSA's 800 number, which costs 4500 workyears annually to operate. The call length would be shorter than those handled by the 800 number, which would require fewer telephone representatives, but the costs would nevertheless be substantial.

In support of the President's immigration reform initiatives, we are in the early stages of developing a fully automated online verification system for employers. Our intent is to develop a system which can be thoroughly tested on a small scale, with a small number of employers, in early 1996.

In developing the system, we want to ensure not only that it will be accurate, but also easy for a wide range of employers to access and use. There are approximately 6.4 million employers in this country, some of whom employ thousands of people in multiple locations, but many of whom employ only a few. Although we want to facilitate use of the system, we must also build in safeguards against unauthorized access to our confidential databases.

Since a system of this nature could generate as many as 50 million inquiries per year when fully implemented, we would consider the possibility of contracting for any expansion of this service after initial testing.

*Question 2.* A major problem in creating a secure verification system is the current absence of coordinated birth and death records. Could SSA information from the records of deceased participants be used for this purpose? How could this be done?

Answer. As your question implies, the effectiveness of any employment eligibility verification system is heavily dependent on the authenticity of documents which are submitted by the employee. One obvious method of fraud to which a verification system may be susceptible is the use of a deceased person's records, including his or her birth certificate, to establish a false identity.

As you suggest, one way of minimizing this type of fraud is to coordinate birth and death records so that a copy of a birth certificate is not issued for someone who has died. Since birth and death records are maintained by States, this would require a system whereby each State is provided with death information from all other States so that birth records could be appropriately annotated. The most efficient process for doing so would be through a centralized source of death information.

SSA currently maintains death records (referred to as the Death Master File (DMF) based on reports of deaths from various sources. The file contains an individual's Social Security number, name, dates of birth and death, State or county of residence, and a code indicating the source of the death report. The most common sources of death reports to SSA are family members, funeral directors, postal authorities, financial institutions, and State vital statistics agencies.

Although, it would be possible for SSA to function as a central source of each information, and to share that information with States so that they could annotate their birth records, it would be just as easy for states to form a consortium for that purpose. SSA would need additional resources to perform those tasks. The effectiveness of such a system would depend, of course, on the full participation of all 50 States, each of whom would have to agree to use the data provided and put in place safeguards which would control the reissuance of a dead person's birth certificate.

Although feasible, a number of issues would have to be addressed in order for SSA to function as a clearinghouse for death information:

The law does not permit SSA to provide death information obtained from a State source to other States, except for the purpose of ensuring proper payment of benefits under a Federally funded benefit program. The law does not permit SSA to provide States with death information (except in certain limited circumstances) if the source of the information is a State.

Although the DMF is for the most part accurate, many death reports on the DMF are not verified. SSA does not verify reports of nonbeneficiary deaths, nor does it verify reports of beneficiary deaths received from family members, funeral directors, or postal authorities. Also, while the accuracy rate varies by State, error rates tend to be higher for all States initially. In addition, some death reports cannot be posted to SSA records due to erroneous SSN data, and

there is often a time lag between the date of death and the date on which States report deaths to SSA.

While cross-referencing birth and death records would deter individuals from using deceased person's birth certificates, this solution is largely prospective and long-term. Cross referencing birth and death records retrospectively would be virtually impossible, since most birth and death certificates issued before the mid-1980s do not carry the Social Security number (SSN). Of the approximately 100 million SSNs issued to persons who subsequently died, the DMF has a death record for only about 52 million of them. Thus, providing SSA's death records to States would not preclude someone from fraudulently obtaining a birth certificate for one of the 50 million deceased persons whose death has not been reported to SSA.

*Question 3.* In the past, the Social Security Administration has suggested that State driver's licenses with validated social security numbers be used for employment verification purposes. Does SSA still support this approach?

Answer. SSA has suggested that the use of State driver's licenses for employment verification purposes would be a more effective alternative to proposals which would require SSA to reissue enhanced Social Security cards for that purpose. Considering the substantial efforts and resources it would take to enhance and reissue the Social Security card so that it could satisfactorily function as a means of identity in the employment eligibility verification process, it would seem preferable to continue to use State driver's licenses for this purpose.

However, the employment eligibility verification pilot projects included in the Administration's immigration reform initiatives appear to have the potential for establishing an efficient employment verification process without the need to include validated Social Security numbers (SSN) on driver's licenses. The projects will include a two-step verification process which will allow employees to verify the employment eligibility of new employees by using SSA records and, if necessary, by using Immigration and Naturalization Service (INS) records. If successful, this process would preclude the need for a new document in the possession of the employee to include his or her SSN.

If a joint SSA/INS database is eventually established, as suggested by the Commission on Immigration Reform, an employment eligibility verification process based on the use of such a database would also make it unnecessary for the employee to submit evidence of his validated SSN.

*Question 4.* What privacy concerns have arisen in screening applicants for needs-based assistance, under the SAVE program and otherwise; how will the alien eligibility standards proposed by S. 269 affect these concerns?

Answer. Since the inception of the Social Security program, we have always taken our responsibility to protect the privacy of personal information in agency files most seriously. We remain committed to safeguarding the confidentiality of personal information which we have in our possession, regardless of the purpose for which the record is kept. Thus, the alien eligibility standards proposed by S. 269 will not affect our efforts to safeguard the privacy of our records.

Increased computerization of Social Security over the last sever years has made it possible for employees to receive information to handle a claim or answer questions within seconds. While this has improved our ability to serve the public, it has also meant that we have had to find new ways to protect the privacy of our records. To minimize the misuse of those records, we have built safeguards into our systems, such as limiting access to records to authorized employees, monitoring access to sensitive files, designating security officers to supervise overall system security, and providing for local management review of actions processed in local offices.

*Question 5.* Under current law, some of the income of the sponsor of an immigrant is "deemed" to be available to the immigrant for purposes of eligibility for certain Federal programs. Please comment on the effectiveness of the current deeming provisions. What changes do you recommend?

Answer. Sponsor-to-alien deeming applies in the Supplemental Security Income (SSI), Aid to Families With Dependent Children (AFDC), and Food Stamp programs. I can only address the effectiveness of sponsor-to-alien deeming in the SSI program.

As I discussed in my testimony, sponsor-to-alien deeming under the SSI program currently applies for a period of 5 years after the immigrant's admission into the United States for permanent residence and applies to all lawfully admitted, individually sponsored immigrants, except for those who become blind or disabled after their admission into the United States, or those who entered originally in certain statuses, such as refugees and asylees. Sponsor-to-alien deeming is effective with regard to SSI as shown by the fact that fewer than 5,000 immigrants with individual sponsors who were on the SSI rolls in December 1994, came on the rolls before the

deeming period ended. This is only about 1 percent of all aliens lawfully admitted for permanent residence who received SSI benefits in December 1994. It should be noted that sponsored immigrants may be eligible for SSI benefits during the 5-year period if the sponsors' financial situation changes or is otherwise insufficient to fully support their dependents, including the sponsored immigrants.

We support changes that would strengthen the responsibility of sponsors for the immigrants they sponsor.

*Question 6. Would a bond requirement be a better approach or a desirable supplement?*

Answer. Generally, sponsor-to-alien deemed effectively limits sponsors' shifting their financial responsibilities to the SSI program. While we favor strengthening the sponsors' responsibilities, I do not know whether requiring sponsors to post bonds would have any greater effect than current-law deemинг in limiting sponsored immigrants' access to SSI.

As to the desirability of a bond requirement, I will have to defer to the Immigration and Naturalization Service since the issue is one of overall immigration policy beyond the scope of the SSI program.

*Question 7. Do you believe that sponsored immigrants should be able to sue their sponsors if they fail to provide needed support?*

Answer. Again, I will have to defer to the Immigration and Naturalization Service as the issue involves programs and policies beyond my purview as Commissioner of Social Security.

However, I would point out that there may be cases where a sponsor's income or resources prevent an immigrant's SSI eligibility and the sponsor, in effect, abandons the immigrant. In such a case, immigrants would find themselves in situations in which they would neither be able to rely on public assistance nor to compel their sponsors to provide needed financial support. In these situations, it would seem that immigrants' ability to sue their sponsors might be one way to induce sponsors to live up to their obligations.

*Question 8. In the event of a sponsor's disability or death, the sponsored alien would be more likely to qualify for assistance (there would be less sponsor income and resources to "deem"), yet government agencies would be less able to recoup their outlays. How should this prospect be taken into account?*

Answer. SSI was designed as a program of last resort. That is, benefits are paid to aged, blind, and disabled individuals only to the extent that their needs cannot be met from any other source. Sponsor-to-alien deemинг fits into the overall design of the program in that the sponsor's income and resources are taken into account in determining the immigrant's need for benefits. If the sponsor's income decreases or stops, or his or her resources are depleted, for example, because of disability, the sponsored immigrant may become eligible for SSI. Likewise, if a sponsor dies, his or her income and resources are no longer available to the immigrant.

Under current law, SSA does not have the authority to recoup SSI benefits that had been correctly paid to an immigrant or anyone else. (Both the immigrant and sponsor are liable for repayment of incorrect SSI payments and those incorrect payments may be recovered by withholding current and future benefits.) SSA does not have any experience in recovering correctly paid benefits and, thus, does not have any suggestions with regard to the situation you describe. However, if Congress wanted to require repayment of benefits, one approach—as suggested by your previous question—to guaranteeing such repayment would seem to be forfeiture of a bond that sponsors would be required to post before immigrants would be admitted into the United States.

*Question 9. To what extent can affidavits of support and/or bonds assure self sufficiency, given the high cost of health care? In particular, how can a citizen petitioning for an elderly parent adequately assure that the parent's medical needs will be taken care of without public expense?*

Answer. (Provided by the Department of Health and Human Services). Given the high cost and unexpected nature of health care needs, affidavits of support and/or bonds may not assure that the immigrant's medical needs will be taken care of without public expense.

To help minimize the risk of public expense, it may be prudent to consider an assessment of medical care costs when determining a sponsor's financial ability to sponsor an immigrant. Furthermore, Congress may want to consider allowing elderly, sponsored immigrants to buy into the Medicare program at the full actuarial cost of such coverage. This would allow the elderly to receive the medical services they need without exposing the public to additional costs.

**RESPONSES OF SHIRLEY S. CHATER TO QUESTIONS SUBMITTED BY SENATOR THURMOND**

**Question 1.** A repeated assertion in the written testimony is that illegal aliens come to the United States for jobs. Many Americans hold the view that illegal aliens come to our country to take advantage of generous welfare payments, and good medical care. If within your area of expertise or knowledge, please explain whether this widespread view is correct, and if so, what you would recommend to combat the attraction of the American welfare system.

Answer. We have no firm evidence one way or the other; we have no evidence that they do come because of SSI, but some may have been influenced by the existence of the program. There just are no SSA data on this assertion.

**Question 2.** Dr. Chater, please elaborate on your written testimony about why the *Berger* decision increased the number of aliens receiving money from Social Security because they are in a category of aliens that the INS knows about, permits to remain in the country, and does not contemplate deporting.

Could you or Ms. Meissner please give us examples of what types of aliens the INS allows in this category?

Answer. In order to be eligible for Supplemental Security Income (SSI), an individual who is not a citizen or national of the United States must be either lawfully admitted for permanent residence or "permanently residing in the United States under color of law" (PRUCOL). The SSI statute—title XVI of the Social Security Act—does not include an all-inclusive list of immigration statuses that are considered to be PRUCOL. At issue in the *Berger* court was the definition of PRUCOL.

Before the *Berger* decision, SSA regulations and operating instructions defined as PRUCOL aliens who: were refugees; were paroled for an indefinite period; had been granted asylum as refugees; had continuously resided in the United States since before June 30, 1948; had been granted "indefinite voluntary departure" status; or, had been granted indefinite stays of deportation.

The decision in *Berger* incorporated the then-current PRUCOL definition and expanded the number of aliens who could be eligible for SSI by adding other aliens known to the Immigration and Naturalization Service (INS), who are not in the United States temporarily, and whose departure from the United States the INS does not contemplate enforcing, specifically including, but not limited to, aliens: against whom deportation proceedings have been stayed, deferred, suspended, or withheld; granted voluntary departure, including aliens who are awaiting issuance of immigration visas based upon approved petitions filed by immediate relatives; or whose applications for adjustment of status to that of lawful permanent residents are pending.

With regard to the PRUCOL definition, the *Berger* court order specified that: "An alien in a particular category shall be considered as one whose departure the Immigration and Naturalization Service does not contemplate enforcing if it is the policy or practice of the INS not to enforce the departure of aliens in such category or if, on all the facts and circumstances in that particular case, it appears that the INS is otherwise permitting the alien to reside in the United States indefinitely."

Current SSA regulations (at 20 CFR 416.1618) list the categories of aliens specified in the *Berger* court order as PRUCOL. The court order required SSA to determine whether INS contemplates enforcing the alien's departure for aliens in some of the categories. Other categories, specified by the court, do not require determinations as to whether INS contemplates enforcing departure since, by their nature, these categories imply that INS does not contemplate enforcing the alien's departure. SSA worked closely with INS in developing the list of PRUCOL categories.

Following is a complete list of the 17 PRUCOL categories listed in SSA regulations as a result of the *Berger* decision or added based on *Berger* since the decision.

Refugees (under section 207 of the Immigration and Nationality Act (INA)).

Conditional entrant refugees (under INA section 203(A)(7) in effect prior to April 1980).

Asylees (under INA section 208).

Parolees (under INA section 212(d)(5)).

Lawful temporary residents (under INA section 245A).

Aliens who have: Had their deportation withheld (under INA section 243(h)); had their deportation suspended (under INA section 244); been granted indefinite stays of deportation; indefinite voluntary departure status; court-ordered stays of deportation (under INA section 106); court orders of supervision (under INA section 242); approved immediate relative petitions; filed applications for adjustment of status (under INA section 245); resided in the U.S. continuously since 1/1/72; been granted deferred action status; and been granted voluntary departure status (under INA section 242(b)).

Any other aliens living in the United States with the knowledge and permission of the INS and whose departure that agency does not contemplate enforcing.

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#### RESPONSES OF SUSAN MARTIN TO QUESTIONS SUBMITTED BY SENATOR SIMPSON

*Question 1.* Have any of the Commissioners expressed any view about how the Administration is proceeding in the development of a new verification system, for employment and for public assistance?

Answer. The Commissioners received a briefing from Doris Meissner, the Commission of INS, just prior to the release of the President's budget initiative. Following the briefing, Chair Barbara Jordan sent the attached letter to President Clinton stating appreciation for the Administration's prompt response to the Commission's recommendations on verification. Professor Jordan expressed the Commission's interest in monitoring implementation of these proposals. As our monitoring provides new information, we will present further conclusions to this Committee.

*Question 2.* Has the Commission obtained or developed any estimates of the costs of various alternative verification systems?

Answer. After consulting with numerous experts on verification methods, the Commission concluded that a computerized registry based on the social security number is the most promising option. Even the most tamper-proof document would still require that the information on the document be verified electronically to ensure against counterfeiting, according to the most knowledgeable experts.

Accordingly, the Commission did not conduct exhaustive cost-benefit analyses of each possible approach. The Social Security Administration has estimated that issuing new tamper-resistant social security cards will cost more than \$2.5 billion. Preliminary estimates which the SSA made of the cost of pilot testing a computerized registry based on the social security number amounted to less than \$300 million over five years, including the cost of correcting discrepancies in the social security database. Of course, correcting errors in the INS data will also have a cost, but the Commission believes that cleaning up these databases should be done anyway, regardless of the pilot projects to test the registry.

By way of contrast, the Urban Institute has estimated the costs of illegal immigration in just seven states amount to more than \$2 billion annually. Spending \$300 million over five years to save \$2 billion every year seems a sound investment.

*Question 3.* Several jurisdictions have fingerprinted public assistance applicants to reduce fraudulent or duplicative payments. What is your opinion of this practice?

Answer. The Commission did not address this issue directly.

*Question 4.* Should fingerprints or other biometric data be part of any identification document used in a system to verify work authorization or eligibility for public assistance?

Answer. Having listened to a range of conflicting expert testimony, the Commission was not convinced that the case for or against such biometric data was proven. What is critical is that the employer should not continue to be required to make decisions that most employers are not qualified to make. Relatively few employers will be able to read fingerprints, or to afford fingerprint-reading equipment, so a fingerprint on a document would not resolve the employer's current dilemma of either accepting a document at face value, or possibly discriminating against particular individuals who just happen to look or sound foreign. The Commission recommends pilot programs to determine the best way to verify the identity of a newly hired worker or applicant for public assistance in order to measure the value of a document (with or without a biometric) linked to a database, versus a document-less telephone verification system.

*Question 5.* Would the likelihood of unlawful discrimination be greater or less with an improved verification system?

Answer. The Commission believes that reliable verification is the key to ending immigration-related discrimination at the worksite. The Commission is concerned about unfair immigration-related employment practices against both citizens and noncitizens that may occur under the current system of employer sanctions. The Commission expects that the new verification system will reduce such practices because employers will no longer have to make any determination as to immigration status.

*Question 6.* What privacy concerns have arisen in screening applicants for needs-based assistance, under the SAVE program and otherwise? How would the alien eligibility standards proposed by S.269 affect these concerns?

Answer. The Commission's principal concern with TVS/SAVE, is its reliance on self-attestation. It is simply not a sound approach to law enforcement to rely on lawbreakers to tell the truth. Nor does self-attestation preclude concerns about dis-

crimination and privacy; in fact, it exacerbates them, as employers find themselves with only the option of prying when they doubt a worker's claim to be a citizen.

But screening for benefits eligibility has a longer history and more effective established procedures, including privacy protections and opportunities for redress, than employment verification. These established procedures may help some, in the instance of a U.S. citizen, who is challenged under the SAVE program. They do not help at all when an illegal alien claims to be a citizen, presents a counterfeit birth certificate, and is not challenged. Given the potential for fraud, the Commission recommends pilot testing new verification procedures in public aid offices as well as at the worksite.

*Question 7.* In the event of a sponsor's disability or death, the sponsored alien would be more likely to qualify for assistance (there would be less sponsor income and resources to "deem"), yet government agencies would be less able to recoup their outlays. How should this prospect be take into account?

Answer. In recommending that abuse of the public charge provision be made grounds for deportation, while opposing any blanket denial of eligibility for public assistance based on alienage, the Commission intends to preserve the social safety net for those immigrants who truly need it because of changed circumstances that could not be foreseen.

The Commission recognizes that the death or disablement of a sponsor, an immigrant head of household, or other unforeseen events, may result in a sponsored immigrant becoming a public charge. In the Commission's view, this is different from abuse of the public charge provision by an immigrant who receives public assistance soon after arrival, for a prolonged period, for some condition which existed prior to admission.

The Commission's recommendation to make the affidavit of support legally enforceable will, of course, require new standards as to who must have an affidavit of support and who may sign them. That may render the prospect contemplated in this question somewhat less of a concern, since the inability of sponsors to meet their obligations can be minimized to the truly unforeseeable through the application of standards for who may be sponsors and who will be required to have them.

*Question 8.* To what extent can affidavits of support and/or bonds assure self sufficiency, given the high cost of health care? In particular, how can a citizen petitioning for an elderly parent adequately assure that the parent's medical needs will be taken care of without public expense?

Answer. The Commission discussed, but did not formally make recommendations about this issue. Our report notes that special consideration should be given to the issue of medical care for sponsored aliens. One possible option is to require that sponsors purchase health insurance, another is to allow the sponsor to buy into Medicare coverage for elderly immigrants. Under current law, individuals who are otherwise ineligible may buy Medicare coverage (both Part A and Part B) for themselves. There is a five year waiting period before an immigrant is eligible to purchase any form of Medicare coverage. Permitting this Medicare buy-in option to, for example, a citizen petitioning for an elderly parent could reduce the imperative many families feel to have an elderly immigrant qualify for Medicaid under the pressures of intolerable health care costs. The rate charged to sponsors could be set at an actuarially fair value.

#### RESPONSES OF SUSAN MARTIN TO QUESTIONS SUBMITTED BY SENATOR THURMOND

*Question 1.* A repeated assertion in the written testimony is that illegal aliens come to the United States for jobs. Many Americans hold the view that illegal aliens come to our country to take advantage of generous welfare payments, and good medical care. If within your area of expertise or knowledge, please explain whether this widespread view is correct, and if so, what you would recommend to combat the attraction of the American welfare system?

Answer. This bipartisan Commission Carefully examined this issue from both sides, and unanimously concluded that the primary attraction which motivates illegal immigration is jobs. The data shows most illegal aliens enter the United States, or remain after their legal visas have expired, in order to obtain employment. Accordingly, the Commission recommended reducing the job magnet as the key to effectively controlling illegal immigration.

Once here, illegal aliens do take advantage of U.S. public assistance programs. The Commission unanimously recommended that eligibility for public assistance should be consistent with the goals of our immigration policy. In particular, the Commission recommended that illegal aliens should be ineligible for public assistance, with certain narrow exceptions for highly unusual circumstances. Among these

circumstances are emergency medical care; where there is a public health or safety benefit, such as immunization for communicable diseases; and where there is a Constitutional protection such as the Supreme Court held exists for K-12 education in *Plyler v. Doe*.

**Question 2.** Ms. Martin, your testimony indicates that worksite telephone verification of employees might use some sort of secret identification numbers, such as are used with Automatic Teller Machines. But I fear that individuals might not see the importance of keeping their identifying information confidential in the same way that they protect their bank accounts. Could you please discuss this issue and why you believe individuals would keep their information secret?

**Answer.** The Commission suggests the worker's mother's maiden name or the place of birth, as examples of the personal information that might be used as a PIN number, in effect, for worksite verification. Both of these pieces of information are already in the SSA database, and so have the advantage of not requiring a whole new level of verification and issuance of PIN number, which would impose a considerable cost. It is true, of course, that these pieces of information are not confidential, although they are not likely to be widely known. We do recognize, however, that this type of information can be obtained from birth certificates and might be appropriated by smuggling operations.

Therefore, the Commission recommendation includes an audit and logging component for the computerized registry. Credit and other companies routinely scan their transactions for suspicious behavior, such as simultaneous point-of-sale purchases on the same account in widely-separated areas. In like fashion, the Commission believes it is worth testing to determine if auditing electronic validation of the social security number will yield information on counterfeiting rings that use the same name and social security number many times over.

**Question 3.** Ms. Martin, your testimony indicates that you hope to have meaningful results back by 1997 from worksite verification pilot projects, but that project design and development could take two years. How long do you think the pilot project would be in operation before the final report of the U.S. Commission on Immigration Reform is submitted?

**Answer.** The Commission wants to have meaningful results in time for their final report, which means sufficient empirical data to be able to determine whether a recommendation to implement the system nationally is warranted. There are several ways pilot testing electronic validation of work authorization could produce such results by mid-1997, but of course they all depend on the results of the design and development phase that is now underway.

The Administration has proposed a "two-step" program that could be implemented while the one-step computer registry we proposed is developed. Under the two-step approach, information will be checked with both the Social Security Administration and the INS, as needed. The results of such a pilot should provide useful information to assess the potential for making further improvements at a national level. As the Administration's progress becomes more clear, we will keep you informed as to how conclusive the Commission's 1997 recommendation can be.

**Question 4.** Ms. Martin, you provided some estimates of the costs for the worksite verification pilot program you propose. Do you have, or could you provide, an estimate for what the total annual cost would be if worksite verification were fully implemented across the country?

**Answer.** The Social Security Administration estimated annual maintenance and operating costs of approximately \$32 million to verify all hires nationally (estimated at 50 million per year), and (after the initial phase) an ongoing cost for correcting discrepancies of roughly \$30 million a year. We are not sure of the INS annual cost for correcting discrepancies, once the major improvements needed in its database are completed.

These figures include the automated system itself, an 800-number to receive calls, the operators to handle calls that cannot be handled by the automated system, and the corrections. This estimate was consistent with those provided by banks that verify credit card purchases, which require similar technology.

What is not clear is what other features a fully-functional, reliable system for worksite verification would entail. That is why the Commission recommends pilot projects which start small and build a knowledge base for what works, before going onto the next step. The Commission recommended three specific approaches be tested: a pure telephone system to access the registry, which would not rely on any single document and might not require documentation at all; a system that used drivers' licenses, which many states have enhanced using the latest tamper-proof techniques; and a system that uses a tamper-proof social security card. Each of these systems might entail different costs, but each also would rely on the computerized

registry, even those relying on enhanced documents, to verify the information on the documents.

*Question 5.* Do you see any possibility for avoiding the need to verify every worker for every job? For example, other testimony today indicates that some European countries have tried using industry-specific measures. Would it be possible to limit verification to certain sectors of employment or lower-paying jobs, in order to minimize the bureaucracy that would be required to verify every worker hired in the country?

Answer. The Commission is not convinced that a large bureaucracy is needed to prevent the unwitting hire of illegal aliens by law-abiding employers. A reliable system of worksite verification that enables employers to merely ask a question that all must now ask anyway—"What is your social security number?"—and use the answer to quickly and conveniently fulfill their obligations under the law, would be far superior to the paperwork burden now imposed by the INS.

The Commission agrees that the enforcement of employer sanctions should target industries such as farm labor and other contractors. As the Commission report states:

The Commission is convinced that the most effective use of limited resources is targeting resources to investigate likely violations. Agriculture continues to be a major employer of illegal aliens, as well as a violator of other labor standards. A 1989 GAO report on employer compliance with IRCA found that five major nonagricultural industries also regularly employ illegal aliens: construction companies; manufacturers of food products; manufacturers of apparel and textiles; eating and drinking establishments; and hotel and lodging services. A significant number of employers in these same industries are also involved in a variety of labor law violations, placing law-abiding employers at a serious competitive disadvantage.

Whether the verification can be limited by industry or geographic location is less clear. In the pilot projects to test the registry as the Commission recommends, one option would certainly be to look at the results from particular regions or particular industries, to determine how effective an approach it would be to simply focus on areas where the problem is most acute. The critical factor must remain, however, that wherever worksite verification is done, all workers must be treated the same. That is one reason the Commission concluded the registry based on the social security number is the most promising option, because it means that all workers will only be asked the one, identical question. That could not only be more effective in deterring the employment of illegal aliens, it could also eliminate the discrimination which are also a critical immigration-related problem at the worksite.

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U.S. COMMISSION ON IMMIGRATION REFORM,  
Washington, DC, February 3, 1995.

The President,  
White House,  
Washington, DC.

DEAR MR. PRESIDENT: I regret that I will be unable to join you for the launching of your new initiative on immigration. As you know, I will be en route to a Commission site visit on Tuesday.

On behalf of the Commission, I write to express appreciation for the prompt attention your Administration has given to our recommendations to stem the entry of illegal aliens into this country. We welcome your commitment to enhance border enforcement and management, improve verification of work authorization and enforcement of employer sanctions and labor standards, speed the removal of deportable aliens, and address the costs that illegal aliens present to states.

The Commission looks forward to seeing the details of your budget initiative and to working with your Administration to address these important issues.

Sincerely,

BARBARA JORDAN, Chair.

RESPONSES OF MICHAEL FIX AND WENDY ZIMMERMANN TO QUESTIONS SUBMITTED BY  
SENATOR SIMPSON

*Question 1.* Should the government enforce the sponsor's affidavit of support, or should enforcement be left to the sponsored immigrant?

Answer. This deceptively simple question reveals many of the difficult issues raised by making the affidavit of support enforceable.

On the one hand, there are clear merits to leaving enforcement to private parties. New public enforcement programs do not have to be created, new regulations do not need to be written, public resources do not need to be expended, legal challenges to government action will be avoided, etc. At the same time, though, we wonder whether the right to sue will prove to be a very effective instrument when it is held by a group that has few resources, is unfamiliar with the U.S. legal system, and is often intimidated by public institutions like courts. Moreover, simply granting the sponsored immigrant the right to sue will not provide any relief to federal, state or local agencies that may have provided assistance to the immigrant.

Further, if the right of action were left to the private parties, when would the abandoned party have a legitimate cause of action? What remedies could he or she pursue? Take the case of elderly immigrants reuniting with their adult children: When would abandonment be established? What level of financial support would be due? Would such support be a fixed share of the incomes of the sponsor—as is the case in child support? Would SSI payment levels represent the minimum?

What if government were vested with the authority to pursue immigrants' sponsors? Two lessons from the experience of child support enforcement seem to favor taking this approach. One is that support enforcement can prove quite effective when its targets have modest or higher incomes. Another is that the recovery of support can be efficiently accomplished by administrative mechanisms such as use of the tax system to collect payments.

But deploying government in this way raises a number of implementation issues. For which programs should the government seek reimbursement? Should they be all the programs to which deeming applies? Should government be vested with the right to reclaim the costs of SSI? Services rendered under Medicaid? Food Stamps? The difference between the cost of a federally subsidized loan to attend a community college and a market rate loan? When the immigrant receives a public good or service (versus cash) how should it be valued? Would each government agency that provides a service or a benefit have a cause of action against the immigrants' sponsor? Or would that responsibility be assigned to single agency?

In terms of feasibility it seems to us that enforcement will probably have to be limited to cash transfer programs (SSI, AFDC) and perhaps, Medicaid.

But other questions also arise: What government agency has the capacity to conduct the investigations and enforcement activities that would be required? How much would it cost to create it? How would the costs stack up against the recoveries that are likely to be made? Do the agencies that administer SSI have the capacity? Could enforcement be piggybacked on the child-support enforcement system (which is already quite heavily taxed)? Would the agencies be likely to have the bilingual staff necessary to carry out the investigations? Would an abandoned immigrant be eligible for welfare payments before the government had collected from his or her sponsor? Or would the immigrant have to wait until the government had sued and collected?

Further, we wonder whether a false dichotomy has been created: should a combination of public and private enforcement mechanisms be forged, as it has been with regard to antidiscrimination laws?

In sum, it strikes us that the Subcommittee may need to direct that further analysis be done that would examine the feasibility, costs, and limits of both of private and public enforcement of the affidavit of support as well as the merits of a mixed, public/private system. The study would closely examine the many lessons from the child support enforcement system in addressing the issues raised above as well as others.

*Question 2. Should sponsors' income be at least 125 percent of federal poverty guidelines?*

Answer. While it is reasonable to require that sponsors demonstrate that they can support the immigrants they sponsor, it probably makes sense to allow those sponsors to do so in a variety of ways. For example, a sponsor may have assets or other means of support for the immigrant.

The rules of exclusion should, however, continue to allow immigrants to enter who can demonstrate on their own a potential for economic mobility. A hard and fast rule of exclusion could work to bar the entry of immigrants whose economic prospects—as indicated by their credentials and occupations—might be brighter than those of their sponsors. In this case, the public sector could gain by admitting the immigrant whose earnings might keep his or her sponsors off of public benefit programs.

*Question 3. Should all family-sponsored immigrants have an affidavit of support?*

Answer. One of our concerns with the sponsorship and deeming system is that it sets up different standards for sponsored and non-sponsored immigrants. While making all family-reunification immigrants obliged to have a sponsor puts all family

reunification immigrants on equal footing, it still leaves immigrants who enter through employment or diversity categories free of any deeming requirements.

Currently, those immigrants who can prove that they are not likely to become a public charge without an affidavit of support (for example, with a promise of employment) are not subject to deeming. It seems to us that family reunification immigrants should be given the same opportunity as other immigrants to prove, without an affidavit of support, that they will not become a public charge. Therefore, it does not seem to make sense to require an affidavit of support of all family reunification immigrants.

We also want to emphasize that there is currently no way for eligibility workers to determine who is a sponsored immigrant. There is no code on the immigrant's documentation and this information is not included in the SAVE, or ASVI, data base. Currently many states simply ask immigrant applicants for benefits whether they are sponsored. This problem could be fixed, in the long term at least, by adding that information by immigrants' documents.

In sum, we do not believe that an affidavit of support should be required of all family reunification immigrants. At the same time, though, we believe that immigration identification documents should be coded so that eligibility workers can readily distinguish between sponsored and unsponsored immigrants.

#### RESPONSES OF MICHAEL FIX AND WENDY ZIMMERMANN TO QUESTIONS SUBMITTED BY SENATOR THURMOND

*Question 1.* Good and bad points regarding crediting INS with employer sanctions penalties over \$5 million.

Answer. The best—and most obvious—rationale for the proposed credit is to increase the resource available to the agency. Despite the rapid growth in the INS budget, this makes sense given the scope of the agency's regulatory and other responsibilities, as well as the extraordinary demands now being placed on the agency by unprecedeted demands for naturalization. With this in mind, we believe that the agency's leadership should be given substantial discretion regarding how those resources will be deployed—whether they are used for sanctions or border enforcement, or to bolster agency operations in the areas of naturalization or antidiscriminatory education.

One problem with this type of credit/incentive is that it can lead to the adoption of enforcement strategies geared to maximizing penalties rather than compliance. In the field, such productivity incentives can discourage enforcement staff from making refined judgements regarding employers' bad faith or likely future compliance. In practice, monetary incentives can lead to an overemphasis on paperwork fines that do little to change hiring procedures, have little effect on curbing the employment of illegal immigrants, and increase resistance within the regulated community. Indeed, it appears that some district offices overemphasized paperwork-only violations during sanctions' early years. In those offices, investigators' salaries and performance reviews were linked to the level of fines cited.<sup>1</sup>

Another rationale for creating a credit would be to increase the agency's motivation to enforce employer sanctions. But it is not clear that the agency needs to be pushed to increase the priority assigned to sanctions' enforcement. While sanctions' enforcement may have been subordinated to other INS missions in the past,<sup>2</sup> this no longer appears to be the case.

*Question 2.* Are there any problems with making welfare payments less available to those who are not citizens?

Answer. We agree that it makes sense to encourage naturalization. But we worry that proposals to make virtually all need-based public benefits contingent upon citizenship will create a strong imperative to naturalize to retain benefits and not as a statement of allegiance to the nation.

Such a change in policy marks a sharp departure from historical notion of citizenship. Previously the nation has drawn a bright line between benefits eligibility for undocumented and legal immigrants. By shifting the line to distinguish between citizens and legal immigrants, proposed policies would effectively demote the nation's approximately 11 million legal permanent residents, making them more like guests than members of the society. Moreover, as Constitutional scholar Alexander Bickel

<sup>1</sup> See, Michael Fix and Paul Hill, *Enforcing Employer Sanctions, Challenges and Strategies*, Program for Research on Immigration Policy, The Urban Institute and the Rand Corporation, May, 1990, p.110.

<sup>2</sup> See, generally on this point, Jason Juffras, "IRCA and the Enforcement Mission of the Immigration and Naturalization Service," in Michael Fix, ed. *The Paper Curtain, Employer Sanctions' Implementation, Impact and Reform*, The Urban Institute Press, 1991, (pp. 31-65.)

has argued, citizenship has never been an especially important designation in American society beyond a few circumscribed areas: the most notable being political participation.

From an equity of view, legal immigrants pay taxes, are eligible for the draft, and are already compelled to go through a five-year probationary period following entry when they can be deported for becoming a public charge if they become welfare dependent. Further, the public charge provisions coupled with the sponsorship and deeming system, present barriers to welfare dependency, encourage family and individual responsibility and limit the burden that legal immigrants place on the tax-payer.

While the current system has flaws that do call for reform, redefining the attributes of citizenship in such a fundamental way seems to us problematic. It seems so because of the hardships it will create for vulnerable populations and because of its potentially divisive effects. But the proposed changes also seem problematic to us because they may be enacted without the benefit of a deliberate national debate over the changing meaning of citizenship and membership. Rather these important political questions could be resolved in a somewhat ad-hoc way, as a byproduct of welfare reform.

*Question 3.* What changes have there been in the level of illegal immigration as a result of the monetary crisis in Mexico?

Answer. It appears that there has been an increase in the level of illegal border crossing since the devaluation of the peso. According to published reports the number of aliens apprehended along the southern border in January and February was 30 percent above levels recorded a year earlier. There were especially sharp increases in Arizona. (See, *Rural Migration News*, Vol. 1, No. 2, April 1995, The University of California at Davis, Department of Agricultural Economics)

*Question 4.* What are the implications of the fact that welfare use among immigrants is about the same as natives, given that many Americans feel that welfare use among the native born is also too high?

Answer. Several differing relative measures of immigrant and native welfare use are needed to respond to this question.

Overall welfare use. Our analysis of 1994 Current Population Survey data reveals that welfare use among immigrants overall is actually slightly higher than among natives.

Welfare use among the poor. But when we look at welfare use among the poor, we find that poor immigrants are significantly less likely to use welfare than natives. In this regard, immigrants can be viewed as being less inclined to use public benefits than natives.

Welfare use among refugees and elderly immigrants. Further when we examine patterns of welfare use among the immigrant population we find that it is concentrated among two notably vulnerable populations: refugees and elderly, recently-arrived immigrants. Because refugees are fleeing persecution (in that sense their migration is unplanned), do not have family or job networks, and often suffer from physical and emotional problems, their high level of welfare can be distinguished from lower welfare use among working age immigrants. Welfare use among refugees is also highly concentrated in two states—California and New York. They suggest to us that the California and New York refugee programs be examined to determine what, if any, policy changes might make sense within those specific contexts.

Welfare use among the elderly immigrants is concentrated among the recently-arrived (i.e. less than 10 years), most of whom have not worked enough quarters to qualify for Social Security benefits. Moreover, receipt of SSI is a bridge to Medicaid and health insurance—an especially valuable benefit for the elderly and the families with whom they have reunited. Here again, the analogy to welfare use among working age natives does not seem apt from a policy perspective. As a result, targeted reforms that are outside the scope of the current welfare reform debate may make sense. One that we have recommended is to explore compelling elderly immigrants or their sponsors to buy into Medicare.

Welfare use among working age non-refugee immigrants. Finally, the 1994 Census, reveals that welfare use among working age non-refugee immigrants has risen since 1990 and now parallels that of natives. We believe this owes in part to the fact that legalizing immigrants are now eligible for benefits and that many live in California where the economy has been weak. In this context, the reform proposals that are pertinent to natives—portable training vouchers, increased basic education, etc.—are equally pertinent to immigrants. And this, in turn, calls into question proposals to restrict non-citizens' access to employment and training programs to citizens.

*Question 5.* Will there be sufficient attorneys to provide pro bono counselling to detained aliens?

Answer. We do not know.

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#### RESPONSE OF LAWRENCE H. FUCHS TO A QUESTION SUBMITTED BY SENATOR SIMPSON

*Question.* Representatives of various advocacy groups assert that an employer sanctions law, combined with any verification system, will lead to discrimination against persons who are members of certain ethnic groups.

When pressed to state exactly what they mean by "discrimination," they sometimes say that an employer would look at their documents more carefully—for a longer time—than someone with a European ethnic background. I suppose this is indeed a kind of discrimination, but it is surely not as serious as being denied the job.

What do you think about this kind of concern? Is it something to which a government can or should respond? Are differences in time taken to verify job applicants inevitable? Do we want to require an employer to pretend to examine documents even after he or she is actually satisfied?

Answer. First, the question about verification systems leading to discrimination. I understand the concern of the representatives of various advocacy groups that a system to verify eligibility to work—any system—might lead to discrimination. Some discrimination actually exist under the present system. Undoubtedly, there was discrimination prior to the passage of an employer sanctions law and the setting up of the present eligibility system. Our concern for discrimination is one reason why the United States Commission and others want to move toward a system that is not only universal but reliable. Universality and reliability take away from the employer any responsibility for determining employee eligibility. That is the best guarantee of fair and impartial hiring practices. That is the way to eliminate discrimination based on ethnicity, national origins, race, religion, or other personal qualities. The only discrimination intended by such a system, the only discrimination to be accomplished by such a system, is to discriminate against the employment of those ineligible to work.

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#### RESPONSES OF LAWRENCE H. FUCHS TO QUESTIONS SUBMITTED BY SENATOR THURMOND

*Question 1.* Could each of you please comment on what you see as the good or bad points of the Administration's proposal to credit employer sanction penalties in excess of five million dollars to INS appropriations?

Answer. The administration's proposal to credit employer sanctions penalties to INS appropriations strikes me as a sound idea. Indeed, it might be desirable to credit employer sanctions penalties to INS appropriations altogether rather than placing any limitation on the total amount collected.

*Question 2.* Could each of you please give your perspective on whether it is good public policy to encourage aliens to become United States citizens, and whether you see any problems in making welfare payments less available to those who are not citizens?

Answer. It is excellent public policy to encourage aliens to become United States citizens, but not by taking away from resident aliens vital safety net protections. I do see a problem in making welfare or safety net protections less available to permanent resident aliens. Of course, all but emergency protections should be taken from illegal aliens.

With regard to legal immigrants, I am in general support of the approach taken by Senator Simpson in his legislation. Let's make the affidavit of support binding as a legal contract. There are ways to do it that have not been attempted before. But let us not exclude from our social community the close relatives of U.S. citizens and the spouses and minor children of permanent resident aliens, or the aliens themselves, because they have not yet become citizens. There are long waiting lines to be interviewed for naturalization purposes in many cities. Approximately five percent of all who take the test fail. In some cases, there are extremely difficult circumstances which prevent naturalization. We are talking about people admitted legally to the United States in the U.S. national interest. They should not be excluded from our basic social family.

Of course, unless they are citizens, they are not yet full fledged members of the political community. And we should encourage them to become so by making more English classes available, speeding up the wait for naturalization interviews and ceremonies, and by making clear the advantages of being a member of our wonderful American civic culture.

*Question 3.* Could any of you address whether there have been changes in the level of illegal immigration at our southern border as a result of the recent monetary crisis in Mexico?

Answer. There is a great deal of speculation as to whether or not the fall of the peso and other economic problems in Mexico have increased illegal immigration. I don't doubt that there has been some effect on migration pressures. But it is impossible to quantify that.

*Question 4.* Available evidence suggests that welfare use among immigrants is at about the same level as among natives. This may not end the debate, however, as many Americans feel that welfare use among native-born Americans is also too high. Would any of you care to comment on this?

Answer. Welfare utilization by working age immigrants is considerably less than for working age native born Americans. The high rates of welfare utilization for immigrants are among those who came as refugees to begin with, and those who came as older immigrants who go on SSI. Refugee numbers will be coming down. But one must always expect that refugees will require some initial support. In addition, because they do not necessarily have families or a job here waiting for them, they may need continuing support. Furthermore, they bring with them a disproportionate number of persons who have suffered great trauma and will necessarily take a longer time to find themselves and work in the U.S. than immigrants.

As for the immigrant elderly population on SSI, some consideration should be given to extending the deeming period for sponsors. The U.S. Commission on Immigration Reform is looking into other aspects of this issue.

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#### RESPONSES OF DAVID SIMCOX TO QUESTIONS SUBMITTED BY SENATOR SIMPSON

*Question 1.* You state that under the present system employers have "little to gain"—and something to lose from possible penalties for discrimination—by informing themselves about ID documents and examining them carefully.

Answer. Consistently since IRCA, and particularly since ImmAct90, laws and practices have discouraged employers from taking an active, investigative attitude toward the documentary proof of work eligibility submitted by job applicants. Verification is a time-consuming process for employers in any event. The language of the law and regulations, with their references to the acceptability of documents that on "their face reasonably appear to be genuine and relate to the individual" in general are interpreted by employers and requiring only a superficial inspection, with a threat of sanctions against employers who go beyond that.

Some probatory documents, such as social security cards (raised printing and geographically-linked prefixes) and drivers licenses (coded personal data about the bearer and color keying), have anti-fraud features readily understandable to any employer who would avail himself of a handbook provided by the National Association of Notaries Public. Yet to apply such tests runs the risk of transgressing the superficial test the law encourages. For employers, passivity remains a safer and less costly approach in inspecting documents.

The changes mandated in ImmAct90 were a further incentive to employer passivity. Employers were banned from requiring more or different documents than those set out by law and regulations under pain of a special penalty. Now, faced with questionable documents, the employer cannot do what would seem quite reasonable in conscientious enforcement of the intent of the law—ask for additional documents on the list that might clarify eligibility. The law places the employer on a tight-rope. I am convinced he judges the lesser risk to be to "play dumb" about documents.

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#### RESPONSES OF DAVID SIMCOX TO QUESTIONS FROM SENATOR STROM THURMOND

*Question 1.* Interior Repatriation within Mexico?

Answer. Interior repatriation can drive home to the apprehended alien that border violations are not a cost-free revolving door game. It raises the costs and risks to the alien of entering illegally, and can influence their decision whether to risk the time, money and inconvenience to try again. Interior repatriation would also help rid Mexican border cities of the problem of floating populations of expelled illegal immigrants and the sub-culture of lawlessness and exploitation that they encourage.

*Question 2.* Credit employer sanctions penalties to INS appropriations?

Answer. I have consistently held that the immigration system itself must generate more of the revenues needed for its own effective management by INS and related agencies such as Customs, Coast Guard, Labor and State and Local agencies that might be induced to cooperate. Availability of such revenues would also be an incen-

tive for INS to do a better job of collecting fines and bond forfeitures. The only aspect of the proposal I fault is that the threshold of \$5 million is too high. INS and related agencies should share nearly all of the proceeds of such fines.

*Question 3. Attorneys for Pro Bono Counseling?*

Answer. There are more than enough attorneys in the United States. But I doubt there would be enough with the right training in the right parts of the country who would be willing to work free in this program.

*Question 4. Acts of violence and extremism?*

Answer. I do believe that we are at risk of suffering even greater violence and turmoil than Europe is experiencing. Violence here takes not only the form of native against immigrant, but domestic ethnic groups against those ethnic groups that are heavily foreign born, such as African-American and Latino conflict in Southern California and South Florida. These tendencies are exacerbated by overall increase of income inequality in recent decades, declining resources for our cities, and a growing sense among working people of very limited future opportunities.

*Question 5. Linkage between deportation and benefits to foreign countries?*

Answer. We should consider limits on the number of visas for legal residence and the access to non-immigrant visas for countries that consistently fail to cooperate in slowing illegal immigration or in accepting the return of their deported citizens. Considering the virtually infinite flexibility of our immigration laws, there is little reason for concern that those foreign nations our country genuinely wants to settle here will not be admitted.

*Question 6. Not answered. Addressed to Mr. Nojeim.*

*Question 7. Welfare use among immigrants?*

Answer. I do not accept that the evidence shows the same welfare use among immigrants is the same as among natives: it is higher and the margin is increasing. But even if the immigrant and domestic use rates were the same, an important policy issue would remain. Domestic welfare use is high for many reasons that need to be addressed. But the users are our fellow citizens and members of our national community. They have a higher claim on our national resources.

Immigration on the other hand is discretionary. High immigrant welfare use, even if no higher than the domestic, suggest something is seriously amiss in our immigration policies. Immigrants are a population supposedly selected for their ability to make their way in the U.S. and are restricted by law from some forms of welfare assistance. Their high use rate suggests that the selection process or the restrictions simply aren't working. A truly selective immigration system, which would make sponsors or employers responsible for indigent immigrants, should produce an immigrant welfare use rate close to zero.

#### RESPONSES OF DAN STEIN TO QUESTIONS SUBMITTED BY SENATOR SIMPSON

*Question 1. In your testimony, you state that FAIR would like to see 10,000 border patrol agents. How did you calculate this number? With this many agents, could the U.S. achieve control over its borders?*

Answer. FAIR's calculation of 10,000 Border Patrol Agents is premised on the current assignment configuration of the Border Patrol. We calculated the number of agents that could be mustered at any given time taking into account annual and sick leave, days off, holidays, and a 5 day work week. 10,000 is the number required to amply cover the border, traffic checkpoints and backup stations. However, 10,000 agents will not be sufficient for a picket-line strategy as seen in El Paso, Texas. Although, some Members of Congress have called for the implementation of such a strategy along most of the border, our calculations, based on the previously mentioned premises, determined that a successful picket-line strategy would require a force of 60,000 to 70,000 Border Patrol Agents.

*Question 2. You also state that the prosecution of immigration law violations is a low priority for U.S. Attorneys nationwide. On what do you base this view? What can be done to change this situation?*

Answer. Our view that the prosecution of immigration law violations is a low priority for U.S. Attorneys is based upon information we have received from immigration officers and agents in the field. These INS personnel have stated that U.S. Attorneys universally decline most criminal immigration violation cases because most of the attorneys believe theoretically that most aliens involved in such violations are deportable and that the deportation process will take care of the situation.

*Question 3. In your testimony you also state that the Department of Justice has failed to appeal several adverse court decisions that weaken INS's ability to enforce U.S. immigration law. Would you furnish the Committee a list of such cases, to-*

gether with your reasons for believing that the decisions were legally incorrect—plus, if possible, an explanation of the harmful effects of each?

Answer. The following cases are of concern to us and on which we will elaborate for you. The cases are broken down into four categories. In general, they all illustrate how immigration policy, a national policy, loses its universal application through contradictory and disparate decisions in the various court circuits around the country. We recommend that jurisdiction for judicial appeals of immigration cases be vested in only the District of Columbia Circuit and that Federal District Courts have no jurisdiction for review beyond habeas corpus with issues in habeas being restricted to matters of identity and alienage.

A. 212(c) Cases—1. *Butros v. INS*, 990 F.2d 1142 (9th Cir. 1993), 2. *Henry v. INS*, 8 F.3d 426 (7th Cir. 1993), 3. *Vargas v. INS*, 938 F.2d 358 (2nd Cir. 1991).

These cases nullify, in three circuits, a long-standing ruling of the Board of Immigration Appeals that once a final order of deportation on a permanent resident alien is handed down and becomes final, such an alien no longer is a permanent resident alien, and is, therefore, ineligible to invoke Immigration and Nationality Act Section 212(c) waivers. In the three circuits, all a former permanent resident alien who lost status through deportation need do is file a motion to reopen deportation proceedings. Deportation can be avoided perpetually by filing motions to reopen which the Board must now accept and which, in effect, negate any final order of deportation, requiring consideration of 212(c) waivers. The circular effect of such motions and applications for waivers essentially eliminates any possibility of deporting permanent resident aliens no matter how egregious or anti-social the crimes. We believe the correct approach to this situation is articulated by the 4th Circuit in *Nwolise v. INS* at 4 F.3d 306 (4th Cir. 1994). The Solicitor General allowed all three cases to stand as decided by the circuit courts. *Certiorari* was not sought from the Supreme Court.

B. Imputed Domicile in 212(c)—1. *Rosario v. INS*, 962 F.2d 220 (2nd Cir. 1992), 2. *Higgins v. INS*, 969 F.2d 1042 (2nd Cir. 1992), 3. *Lepe-Guitron v. INS*, 16 F.3d 1021 (9th Cir. 1994), 4. *Kahn v. INS*, 36 F.3d 1412 (9th Cir. 1994).

A term of continuous residence of no less than seven years is statutorily required for an alien to receive relief of a 212(c) waiver. A long-standing principle to qualify for the exercise of discretion to receive the waiver has been a close relationship of the alien applicant to a U.S. citizen or permanent resident alien. Ordinarily, only marital and parent-child relationships are considered to be qualifying.

Through a trend started in the Second Circuit that has now expanded into the Ninth Circuit, permanent resident aliens who do not have the qualifying term of residence may have residence imputed to them through a parent if that parent has the requisite time in the U.S. Although legitimacy has been a requisite for the conferring by fathers of most benefits by the Immigration and Nationality Act, these courts have ruled that 212(c) benefits can be imputed from fathers who have never been married to their mothers. In *Kahn* the Ninth Circuit ruled that a man and woman living together out of wedlock is to be looked upon as if it had been a legitimate marital union even though the state within which they resided does not recognize common law marriage. As a matter of fact, the 9th Circuit admonished the Board for using state law as the guiding principle for making such a determination. In cases of imputing length of residence to illegitimate offspring, immigration courts and the Board are forced to set themselves up as domestic relations courts to make necessary paternity determinations. The Solicitor General decided not to seek *cert.* in any of these cases and lets confusion reign in such instances across the country.

C. Limitations on Judicial Review in Asylum—1. *Gheblawi v. INS*, 28 F.3d 83 (9th Cir. 1994), 2. *Nasseri v. Mochorak*, 34 F.3d 723 (9th Cir. 1994), 3. *Kotasz v. INS*, 31 F.3d 847 (9th Cir. 1994), 4. *Fisher v. INS*, 37 F.3d 1371 (9th Cir. 1994), 5. *Bastanipoor v. INS*, 980 F.2d 1129 (7th Cir. 1992).

The Supreme Court set the standard of a "compelling evidence" test for judicial review of asylum decisions in *INS v. Elias-Zacarias*, 112 S. Ct. 812, 502 U.S. 478 (1992). The 9th Circuit has effectively nullified the ruling of the Supreme Court in the four cases cited above, and the 7th Circuit is following suit. The Ninth Circuit has gone so far as to define evidentiary issues as "errors of law," evading generally accepted judicial review standards. This court and the 7th Circuit have made it a habit to engage in *de novo* reviews, departing from the official record to make findings of "fact" and "law" simultaneously. The 9th Circuit has gone so far as to bar both immigration judges and the Board from taking administrative notice of well-accepted facts. It is worth noting that in *Bastanipoor*, the subject of that case, a convicted heroin smuggler, was arrested by the FBI just 10 days following the 7th Circuit's ruling on new heroin smuggling charges. Again the Solicitor General declined to seek *cert.* in any of these instances.

D. Exclusionary Rule Applied to Deportation Proceedings—1. *Gonzales-Rivera v. INS*, 22 F.3d 1441 (9th Cir. 1994), 2. *Orhorhage v. INS*, 38 F.3d 488 (9th Cir. 1994).

Long has the Supreme Court held that the exclusionary rule inapplicable in administrative immigration proceedings. It is not that the INS has *carte blanche* authority to violate the Constitution, but there are other remedies. No matter what, an alien who is in the United States in violation of law remains in illegal status. The method of procuring evidence of the violation does not affect the alien's status. In criminal proceedings guilt or innocence is not absolute as deportability is in the case of a deportable alien. Evidence improperly acquired in criminal proceedings is withheld from the trier of fact, and the withholding of such evidence may well affect the outcome in a case where the subject of trial is constitutionally innocent until proven guilty. There is no such constitutional protection in the case of an alien who is in violation of immigration law. If an alien has entered the country in violation of law or has violated the terms and conditions of a temporary admission, the alien's condition is absolute. There is no question of guilt or innocence to be decided.

In the above cases the subject aliens did not gain any kind of legal status through the court's action. The INS was merely estopped from pursing deportation actions against them. In at least *Orhoraghe*, the court again went beyond the record and tried the case *de novo*. It accepted on blind faith assertions of the appellant, totally disregarding contradicting testimony and assertions of the government's agents. Even if the conclusions of fact of the court were correct, the appropriate remedy for the constitutional violations are properly found through a civil action for damages, not through nullification of deportation proceedings. The Solicitor General let the court's decisions stand.

To quote one government official involved with enforcing immigration laws, "[T]hese decisions and many others like them, have a pernicious effect on the enforcement of the immigration laws." We are fast approaching a point where it will be almost impossible to bring most deportation and exclusion proceedings to any kind of final conclusion. Immigration law, clearly and unequivocally (and for good reason), has placed the burden of proof in exclusion proceedings and asylum proceedings squarely on the applying alien to establish qualification for admission or the benefit of asylum. These appeals courts are disregarding the mandate of the law and regularly shifting the burden to the government to prove inadmissibility or disqualification for asylum. It is as if admission to the United States or asylum is an absolute right that must be granted upon demand, rather than privilege for which one must qualify (as the law clearly states).

By all appearance, the current administration seems to be a league with those diminishing the enforceability of the immigration laws. The Solicitor General, the determining official on carrying appeals forward, is allowing more and more obstructive case law to pile up against effective enforcement as shown above. It is made even worse through the lack of uniformity of case law throughout the many appeals circuits. This makes administration of the law a veritable nightmare for the INS whose authority and responsibility goes from coast to coast and border to border. It is an agency plagued by myriad problems not to be recited here, but the inability to follow uniform procedures throughout its jurisdiction, thanks to the disparities of determinations of various appellate courts, is almost as problematic as its inability to properly enforce and administer its responsibilities in the affected circuits. Since there are some INS offices whose jurisdictions cross circuit court jurisdictions, conflicting appellate decisions can become administrative nightmares for such field offices, to say nothing of the INS as a whole.

If the Executive Branch refuses or fails to assert its right to appeal and finally adjudicate crucial issues, perhaps a legislative solution would be appropriate. This could be done by legislation that would centralize all immigration appeals to a single appellate court. The most appropriate court would be the Circuit Court of Appeals for the Federal Circuit in Washington, D.C. It already is the central appellate court for appeals of final administrative findings and appeals of a number of federal agencies. Such legislative action would establish a uniformity of policy that would alleviate the INS of a source of administrative stress the severely affects its functional abilities.

Another indicator that the current administration is less than sincere (or at least diligent) in protecting the potency of the immigration laws it is charged with enforcing and administering is its policy toward appealing decisions of immigration judges. During the previous administration, a policy was established by the General Counsel prohibiting appeals on anything but errors of law. Field trial attorneys were prohibited from filing appeals to the Board on factual errors, factual misinterpretations, or disregarding of facts in proceedings conducted by immigration judges. The current administration has allowed this policy to remain in effect. Since almost all discretionary decisions are based on fact, not law, the INS is oftentimes at the mercy of the prejudices, understandings, misunderstandings, interpretations, and misinterpretations of a corps of immigration judges. Although, this is a problem that

does not readily lend itself to legislative remedy, it may be worth some inquiry in an oversight hearing.

*Question 4.* In your description of the U.S./Cuba accord, you state that the individuals are to be brought into the U.S. through the Attorney General's parole authority, and that they are "in all other respects not eligible to immigrate". Is it your understanding that grounds of exclusion are not being applied to such aliens?

Answer. Most of the Cubans covered by the U.S.-Cuba Accords, if presented for admission to the U.S. under regular admissions standards for aliens would clearly not be admissible. For example, uncles and aunts are being admitted even though there are no relative preference visas available for such extended family members. In other cases, Cubans with no family members in the U.S. are being admitted. Such cases prove that the grounds of exclusion are not being applied to the Cuban aliens.

#### RESPONSES OF DAN STEIN TO QUESTIONS SUBMITTED BY SENATOR THURMOND

*Question 1.* Could each of you state whether you favor interior repatriation within Mexico of illegal aliens who are caught in the United States, and explain why or why not?

Answer. FAIR does favor interior repatriation within Mexico of illegal aliens. If the Border Patrol simply deposits the alien on the other side of the border, then that alien will simply recross at the first available opportunity. Furthermore, interior repatriation is a more humane process because it brings that alien much closer to his/her home and family, thus reducing the ease and the incentive to return illegally to the U.S.

*Question 2.* Could each of you please comment on what you see as the good or bad points of the Administration's proposal to credit employer sanction penalties in excess of five million dollars to INS appropriations?

Answer. FAIR approves of applying employer sanctions penalties to INS as a funding source but we would not approve it being used to off-set appropriations as it is not a dependable or consistent funding source.

*Question 3.* Could each of you please give us your views on whether you think there would be sufficient numbers of attorneys who would be willing to provide *pro bono* counseling for detained aliens as would be required in the pilot project contemplated by the Administration's legislative proposals?

Answer. By all appearances there are a sufficient number of attorneys willing to provide *pro bono* counseling for detained aliens given the numbers of immigration assistance clinics provided by numerous law schools and charitable and religious organizations.

*Question 4.* Some of the written testimony discussed the need for linkage between deportation and something that benefits the foreign country to which the illegal alien will be sent. Could each of you state whether you think that legal visas are the best item to link, or whether that will simply deprive our country of those individuals who we do wish to come here?

Answer. FAIR supports linking the acceptance of deported illegal aliens with legal visas. However, legal visas cannot be the only link, it must extend to foreign aid credits, trade agreements, and other such benefits that we extend to foreign countries.

*Question 5.* Available evidence suggests that welfare use among immigrants is at about the same level as among natives. This may not end the debate, however, as many Americans feel that welfare use among native-born Americans is also too high. Would any of you care to comment on this?

Answer. It is absolutely untrue that welfare use among immigrants is at about the same level as among natives. The Government Accounting Office, in the report Welfare Reform: Implications of Proposals on Legal Immigrants' Benefits, (GAO/HEHS-95-58, February 1995), found that the percent of immigrants who receive SSI or AFDC is higher than the percent of citizens receiving these benefits—6 percent of all immigrants compared with 3.4 percent of all citizens. In 1993, about 29 percent of immigrant households were below the poverty line, compared with 14 percent of citizen households.

The trends of increasing immigrant welfare use are unmistakable—between 1983 and 1993, the number of immigrants receiving SSI more than quadrupled (from 151,000 to 683,000). During these same years immigrants grew from about 4 percent of all SSI recipients to over 11 percent. The trends are the same for AFDC. Between 1983 and 1993, immigrants grew from about 5 percent of all adult AFDC recipients to 8 percent. In 1993, immigrants received an estimated \$1.2 billion in AFDC benefits.

## RESPONSE OF CECILIA MUÑOZ TO A QUESTION SUBMITTED BY SENATOR SIMPSON

*Question.* Why do you say members of ethnic minorities are more likely to require secondary verification under an improved system to verify work authorization, such as that required in S. 269?

Answer. The first pilot project conducted by INS to test its Telephone Verification System (TVS) as well as results from the Systematic Alien Verification for Entitlements (SAVE) program demonstrate why ethnic minorities are more likely to require secondary verification than other persons. The ASVI database, which is used by the INS to conduct both the SAVE and TVS programs, is fraught with errors. In the case of both SAVE and TVS, secondary verification is required for as many as 28 percent of all inquiries. Because the INS database contains information only on immigrants, and the vast majority of immigrants to the United States are Latinos, Asians, or other ethnic minorities, the database which will be used for verification simply reflects these populations. The results of the first TVS pilot indicate that employers found secondary verification to be time consuming and burdensome. It is also true that the persons likely to need secondary verification are immigrants who either have errors in their files, or who have particular statuses which are not in the database or more prone to errors for some reason (persons with work authorization due to Temporary Protected Status or Deferred Enforced Departure, for example, appear not to be in the database, which means that such individuals always need secondary verification). By definition, most such persons are likely to be Latino or Asian. Employers who find secondary verification to be burdensome are likely to conclude that such persons are too bothersome to hire; NCLR believes the verification process itself is likely to engender discrimination from employers who conclude that anyone who might be in the INS database is a problem because too many such people need secondary verification.

I would also note that at least one of the nine employers who participated in the INS pilot program indeed behaved in ways which are likely to have resulted in employment discrimination. Despite the fact that all participating employers signed a memorandum of understanding with INS in which they agreed to follow INS procedures strictly, including procedures to prevent discrimination, one of the surveys returned to INS by an employer states, "Instead of using the mail to do second verification . . . I pick up the phone and call the Border Patrol in Miami. They verify the situation immediately thus avoiding the 2 weeks it takes to get the document verification request form back in the mail." The database used by the Border Patrol is not the ASVI database; it is even less complete. It is highly likely that the persons "verified" in this way lost jobs as a result of this practice. INS apparently tried to correct this behavior, without success. A later survey from the same employer states, "I'm sorry for the misunderstanding regarding Secondary Verifications relating to the phone calls to Miami Border Patrol . . . I thought that was considered secondary but will always back up now with the paperwork." While the employer apparently agreed to do a secondary verification on paper, it is clear that they continued the practice of contacting the Border Patrol when making a decision on the fate of the employees who needed secondary verification.

NCLR believes that the problem of secondary verification will continue, even if the system is expanded to include data from the Social Security Administration (SSA) and is applied to all new hires, rather than only those who attest that they are not U.S. citizens. While it is unclear exactly how such a system would work, it is clear that verification of non-U.S. citizens will continue to rely on the ASVI database. ASVI is likely to continue to have a high secondary verification rate; the 28% figure has been consistent since the creation of the database, despite constant efforts by the INS to improve it. Even under a scheme in which all employees are verified—and for the record, NCLR believes that the employer sanctions experience demonstrates that some employers will choose only to verify "foreign-looking" people—employees who will be verified through the ASVI database will still need secondary verification in large numbers. Such persons will be overwhelmingly Latino and Asian.

## RESPONSES OF CECILIA MUÑOZ TO QUESTIONS SUBMITTED BY SENATOR THURMOND

*Question 1.* Could each of you state whether you favor interior repatriation within Mexico of illegal aliens who are caught in the United States and explain why or why not?

Answer. NCLR does not have a formal position on interior repatriation within Mexico. We would caution the Committee, however, that there are human rights concerns associated with persons from border communities who are "repatriated" to

places far from their residences without the resources to return to their homes and families.

*Question 2.* Could each of you please comment on what you see as the good or bad points of the Administration's proposal to credit employer sanction penalties in excess of five million dollars to INS appropriations?

*Answer.* NCLR has frequently stated its position to the Subcommittee that fees collected from persons seeking visas, adjustments of status, or naturalization should be used in providing those services. We have objected in the past to the transfer of funds from fee accounts to other accounts from which equal amounts of appropriated funds are then transferred for enforcement purposes. It is consistent with this position that funds generated through sanctions penalties or other fines be dedicated to enforcement purposes. In addition, however, we remind the Committee that the Immigration Act of 1990 contained a provision which stipulated that the amount or resources dedicated to enforcement of employer sanctions should equal the resources which are dedicated to anti-discrimination efforts related to sanctions. This purpose of the legislation has never been achieved, perpetuating a situation in which employers have more reason to fear sanctions enforcement than civil rights enforcement. NCLR believes this provides employers with an actual incentive to discriminate. Any addition of resources to sanctions enforcement must be matched with resources dedicated to anti-discrimination efforts.

*Question 3.* Could each of you please give us your views on whether you think there would be sufficient numbers of attorneys who would be willing to provide *pro bono* counseling for detained aliens as would be required in the pilot project contemplated by the Administration's legislative proposals?

*Answer.* Experience with existing detention facilities suggests that there is a severe shortage of *pro bono* attorneys who provide counseling for persons in detention. This is due, in part, to the fact that detention facilities are often in isolated locations, which would require significant travel for any attorney who would seek to provide assistance. It is reasonable to assume that the current shortage will continue unless extreme measures are taken to correct it.

*Question 4.* [Question directed at Mr. Miller]

*Question 5.* Some of the written testimony discussed the need for linkage between deportation and something that benefits the foreign country to which the illegal alien will be sent. Could each of you state whether you think that legal visas are the best item to link, or whether that will simply deprive our country of those individuals who we do wish to come here?

*Answer.* I am unfamiliar with any such proposal in written testimony, and am therefore unable to comment.

*Question 6.* [Question directed at Mr. Nojeim]

*Question 7.* Available evidence suggests that welfare use among immigrants is at about the same level as among natives. This may not end the debate, however, as many Americans feel that welfare use among native-born Americans is also too high. Would any of you care to comment on this?

*Answer.* Actually, according to the most credible sources, welfare use among immigrants is lower than that of natives. While figures reflecting use of public benefits among the foreign born parallel those of natives, these figures include use of benefits by refugees, who are deliberately resettled in the U.S. through the use of benefits programs. Even the most restrictive welfare reform proposals do not contemplate curbing assistance to refugees. The remaining figure reflects the immigrant population; analysis by the Urban Institute shows that working-immigrants use benefits considerably less than natives.

The proposals to restrict benefits eligibility for legal immigrants are offensive for several reasons, not the least of which is the fact that working age immigrants use benefits less than natives. When immigrants are welcomed into the United States, they are welcomed to become part of this nation; they are expected to contribute, and do so mightily. They pay taxes, register for draft, serve with distinction in the military, and enrich the nation both economically and socially. However, they are not super-human; some have accidents or other crises, and require assistance. It is fundamentally unfair to tell these taxpayers that their hard-earned dollars will go to support other needy people in a crisis, but they themselves are ineligible. NCLR believes that such proposals demonstrate the very worst that this nation is capable of.

## ADDITIONAL SUBMISSIONS FOR THE RECORD

AMERICAN CIVIL LIBERTIES UNION,  
Washington, DC, March 23, 1995.

Senator ALAN K. SIMPSON,  
*Dirksen Senate Office Building, Washington, DC.*

DEAR SENATOR SIMPSON: Thank you for inviting ACLU to testify on March 14, 1995 before the Senate Judiciary Subcommittee on Immigration. We appreciate your principled position rejecting the creation of a national identification card. However, ACLU is concerned that the proposed employment verification scheme amounts in fact to a national identification system that poses many of the same threats to civil liberties as does a national identification card. We also fear it would lead to a national identification card, and would engender discrimination against "foreign" sounding and appearing individuals.

You asked about ACLU's position on the privacy aspects of President Clinton's national health care initiative, and whether ACLU expressed the concern that the Clinton Administration's proposed national health security card could become a national identification card. We expressed this very concern on numerous occasions, and most poignantly in the ACLU Public Policy Report Toward a New Health Care System—The Civil Liberties Issues:

The ACLU believes that the protection of informational privacy, particularly of intimate and sensitive medical records, is central to any health care reform proposal.

\* \* \* The creation of a national medical information system raises very serious privacy concerns. The ACLU believes that any personal information collected and amassed for inclusion in the system's electronic data network should not be used for any non-health related purpose.

\* \* \* We urge that the [Health Security Act] prohibit the National Health Board from using the Social Security number as the unique identifier number for accessing health information \* \* \* [because] there is no way to verify the accuracy of existing numbers or that the number holder is who she claims to be.

\* \* \* The creation of any type of national card raises serious civil liberties problems. \* \* \* Based on our experience, the national health care card envisioned by the [Health Security Act] would result in widespread discrimination against foreign-appearing citizens and residents, would become a de facto national identity card and would greatly increase the threat to personal privacy.

Pp. 20-24.

On numerous other occasions, ACLU has opposed plans that we feared could take our country down the road toward a national identification card. We were concerned that President Clinton's proposed national health care card could become such a card and we spoke out. We are concerned today that the national identification system proposed to target undocumented workers poses some of the same dangers to civil liberties as does a card and would eventually lead to a national identification card, and for that reason, we speak out.

ACLU prides itself on taking a non-partisan, principled position on civil liberties matters it considers. Our mandate, and our membership, demand no less.

Please include this letter in the record of the proceedings.

Sincerely,

GREGORY T. NOJEIM,  
*Legislative Counsel.*

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PREPARED STATEMENT OF THE AGRICULTURAL PRODUCERS, SUBMITTED BY RUSSELL L. WILLIAMS

Mr. Chairman and Members of the Subcommittee, I am Russell L. Williams, President of Agricultural Producers, an association representing the human resource and labor management interests of the citrus industry in California and Arizona. The association was actively involved in the debate leading to the Immigration Reform and Control Act of 1986 (IRCA). Following IRCA's enactment, I was appointed to the Commission on Agricultural Workers, which issued its final report in 1992. That Commission examined the issue of available agricultural labor, particularly in

labor intensive agriculture, and the role of immigration policy in providing that labor.

We commend the Subcommittee for addressing the issue of illegal immigration. Clearly, the American people are not satisfied with the current state of affairs, as evidenced most vividly in the strong vote for Proposition 187 in my home state of California last November. Just as clearly, both the Administration and Congress are determined to take moves to reduce substantially illegal immigration.

My plea to the Subcommittee is simple. In the process of reducing illegal immigration, do not ignore the legitimate needs of agricultural employers. This is a topic which the Subcommittee cannot ignore. The components of illegal immigration control initiatives directly affect our industry. Adoption of tamper-proof employment authorization documents tied to a reliable data base, increased border control, and increased internal enforcement of employer sanctions, all directly impact upon agriculture in both the short and long term.

Our industry's concerns are most logically addressed in the context of legislation designed to reduce illegal immigration. They must be addressed in the context of any legislation designed to reduce illegal immigration. We cannot wait for a separate bill on legal immigration, which we understand may be introduced later in this Congress. With all due respect to those who suggest a legal immigration bill is the best place to discuss agriculture's needs, we respond that the enactment of any legal immigration reform legislation in this Congress is much less likely than a bill to reduce illegal immigration, which has widespread, bipartisan support. Our industry cannot gamble by waiting on the "next card" of legal immigration reform. More importantly, a labor supply problem will develop in agriculture as soon as illegal immigration begins to be effectively controlled. Therefore our concerns must be addressed now, as part and parcel of the "solution" to the illegal immigration problem.

Why are agricultural employers so anxious? Agricultural employers, like most other employers, comply with the requirements of IRCA to examine employment authorization documents and complete the Form I-9 when hiring new employees. But examining documents and keeping unauthorized aliens out of the workforce are two separate issues. For a relatively nominal sum (\$100-\$200), an "unauthorized" alien may obtain fraudulent documents sufficiently "valid on their face" to satisfy the "I-9" requirements. Additionally, false "breeder" documents (such as birth certificates) are readily available. However, employers cannot be overly selective or reject employment documents without the serious risk of discrimination charges being brought by the Office of Special Counsel.

As a result, many indications are that a substantial portion of employees in labor intensive agriculture are unauthorized. Thus, enforcement efforts to keep undocumented aliens out of the workforce—whether those efforts take the form of increased border enforcement, interior enforcement, telephonic document verification procedures, or a tamper proof, verifiable identification card—will have a substantial impact on illegal entry and the available labor force. Increased Immigration and Naturalization Service (INS) enforcement at the Mexico border is already beginning to have such an impact.

Since IRCA, fruit, vegetable, and horticultural (FVH) crop production has developed from a relatively small part of the U.S. agricultural industry to its fastest growing sector—because consumer preferences both in the United States and world wide are shifting toward FVH commodities, and because economic growth in foreign countries and removal of trade barriers worldwide are rapidly expanding international markets for FVH commodities. This has increased the need for seasonal agricultural workers in the United States. But it is also important to remember that expanding U.S. and international markets for U.S. FVH commodities contributes significantly to U.S. economic activity and job growth for American workers—in long-term seasonal and full time farm jobs, in agricultural input supply industries, and in processing, transport and marketing of these commodities.

The proportion of the agricultural labor force made up of unauthorized Mexican immigrants grew steadily from the early 1960s; following a brief downturn after the implementation of IRCA, it has again begun to increase. Despite repeated predictions to the contrary, mechanization has not dramatically reduced the need for agricultural labor in the United States. In fact, the decades-long decline in the number of hired farm workers leveled off during the 1970s.

Data on farmworker characteristics are inadequate; however, according to the monthly Current Population Survey (CPS) December 1987 supplemental questions, there were an estimated 2.5 million persons who sometime in 1987 worked on a farm for wages. These farm workers were 78 percent White, 14 percent Hispanic, and 8 percent black or other. Most were young, white, and male. Whites were the youngest farm workers (median age 24), largely because so many of them are 14 to 17 year old teenagers employed during the summer.

The National agricultural Worker Survey (NAWS) defined migrant workers as those who traveled 75 or more miles from their usual residence in search of farm work, and 42 percent of the workers interviewed made such a move. The migrant farm workers in the NAWS sample were primarily Hispanics (94 percent) and born in Mexico (80 percent). Most migrants located by the NAWS are men (82 percent) who, until 1987-88 were unauthorized workers (67 percent). Compared to non-immigrant workers, the migrants interviewed in the NAWS are more likely to be male and Hispanic. The NAWS found that three-fourths of all farm workers in Seasonal Agricultural Services (SAS) crops (principally FVH) are minorities, usually immigrants from Mexico.

The NAWS separated migrants into 2 groups: "shuttle migrants," or perhaps more accurately shuttle immigrants, as they make a single move each year from usual residence abroad to a single U.S. worksite; and "follow-the-crop migrants," who more closely conform to the migrant stereotype by moving at least 75 miles from one U.S. farm job to another. There is also a third category: migrants who shuttle into the United States and then, once here, follow the crops. If there are approximately 2 million SAS workers, then the NAWS indicates that 35 percent, or 700,000, shuttle into and out of the United States. About 14 percent, or 280,000, follow the crops within the U.S., and 7 percent, or 140,000, first shuttle into the country and then follow the crops.

Seasonal Agricultural Workers (SAWs) are the type of worker most likely to be follow-the-crop migrants. East of the Mississippi River (excluding Florida), SAWs are  $\frac{1}{6}$  of the farm workers by  $\frac{2}{3}$  of the follow-the-crop migrants. West of the Mississippi (including Florida), SAWs are 42 percent of the farm workers but 54 percent of the follow-the-crop migrants.

Biological production processes in fields are less predictable than engineering production processes in factories, because weather, pests, and other factors can affect the timing of farming activities and yields. Agricultural production faces risk and uncertainty problems dissimilar from most other businesses. Effective governmental action restricting or significantly increasing the cost of access to workers from Mexico or elsewhere working on FVH commodities could be dramatic and potentially devastating, because about half of U.S. farm employment is concentrated in this sector. But it will also have a significant adverse impact on so-called non-labor-intensive agricultural producers, because that is where nearly half of the agricultural labor in the United States is employed. While labor accounts for a smaller proportion of cost of production for these producers, its adequacy and timely availability is critical to their farming operations.

Specialization and pursuit of comparative advantage are cornerstones of the phenomenal increases in productivity achieved by U.S. agriculture. As a result, Americans enjoy the world's lowest food prices, devoting only 12 percent of their expenditures for personal consumption to food and beverages, versus 15 to 20 percent in Western Europe, 42 percent in Japan, and over 50 percent in India. U.S. agricultural exports, especially in the FVH crops, are significant positive elements in the U.S. balance of payments.

Agricultural employers understand and support the need for effective control over illegal aliens, but believe this should be accompanied by a workable program for securing legal alien labor on a temporary basis for seasonal needs, if and when it is needed. There is currently no workable alternative for agricultural employers. Some of the Special agricultural Workers (SAW) who obtained status through the IRCA legalization program have left agriculture for less seasonal activity. The Replenishment Agricultural Program (RAW), designed to supply agricultural labor during shortages, expired in 1993.

The "streamlining" of the H-2A program Congress attempted in IRCA has not worked. The H-2A program has been rendered all but unusable as a result of litigation by farmworker advocates and an overly restrictive administration by the Department of Labor (DOL).

Agricultural employers seek a controlled nonimmigrant alien worker program that enables growers to secure qualified, reliable labor in a timely manner, at reasonable cost, without excessive bureaucratic procedures when labor shortages develop. The program must be administratively simple, reliable, allow quick response to developing needs, assure access to jobs by U.S. workers, and protect the legitimate economic interests of both U.S. farmworkers and farmers. Such a program can operate without adversely impacting domestic farmworkers and without increasing government expenditures. My association has been working with other agricultural employers across the country to develop a unified proposal that incorporates these concepts and which meet our industry's needs.

In conclusion, let me reiterate a few basic points. The agricultural employer community believes that, though it is complying with IRCA's paperwork requirements, a substantial percentage of its workforce, especially during periods of peak demand, is in the country illegally. If Congress and the Administration are going to reduce that illegal workforce through increased border and interior enforcement and a more secure employment verification system, then agriculture's expected labor shortage needs must be addressed in the context of the same legislation. We are not asking to be allowed to hire foreign labor instead of willing, qualified, and available U.S. labor, but only when such labor is not available, which we expect it will not be in many instances. Finally, a streamlined, nonimmigrant program may be the most workable solution to agriculture's labor problems, while still offering U.S. workers necessary protections.

Thank you for allowing me to provide agriculture's concerns and suggested approach towards seeking a solution. We very much hope that this Subcommittee will face its duty and include in any bill it sends to the Full Committee and the Senate floor a workable program to deal with agricultural employers' legitimate labor needs.

**PREPARED STATEMENT OF AMERICANS FOR IMMIGRATION CONTROL, SUBMITTED BY  
ROBERT H. GOLDSBOROUGH**

Thank you for accepting this statement from Americans for Immigration Control which, with over 250,000 supporters nationwide, is the nation's largest immigration control lobby.

I know that Chairman Simpson and the other committee members are well aware of the problems faced by this country and her citizens as a result of the ever increasing flood of illegal aliens into the United States for the past several decades.

So, in the interest of brevity, I shall enumerate only a few of the more serious problems causing what can only be described as an immigration crisis.

America's net costs of immigration will reach \$60 billion a year by 2003.

More than 300,000 illegal aliens settle in the U.S. permanently each year.

The U.S. admits 1,000,000 legal aliens annually, the highest rate in our history. 90% of new arrivals are from the Third World, and most are poorly skilled and uneducated.

For every 100 illegal aliens who find jobs in the U.S., 65 American workers are displaced.

In the last 30 years, Congress has tripled legal immigration levels.

More than 25% of federal prison inmates are aliens.

More than 72,000 aliens are arrested each year for drug offenses in the U.S.

Uncontrolled immigration will drive the U.S. population from 265 million today to 392 million by 2050.

Why is America unable to adequately repulse this invasion of over 1 million illegal aliens a year when America's military—the greatest military capability in the world—totally repulsed a huge armed military force attempting to invade Saudi Arabia? Why is our government willing to protect a foreign nation but not our own?

**HOW DID IT HAPPEN?**

For nearly thirty years, elected officials in Washington, D.C., pursued policies to increase both legal and illegal immigration, chiefly from the Third World, despite overwhelming voter opposition documented by numerous public opinion polls. These policies were adopted by Congress at the behest of monied interests seeking cheap labor, and at the urging of narrow special interest groups anxious to import constituencies for their own private political, religious, cultural or social goals.

**THE 1965 IMMIGRATION ACT**

The 1965 Immigration Act was advertised by politicians as a modest reform that would end the purported "discriminatory" national origins system, and make the U.S. "look good" to the rest of the world by treating all prospective immigrants equally, regardless of the country of origin. Advocates for the new law promised repeatedly that it would not significantly increase immigration or alter the ethnic balance within our population.

U.S. Sen. Edward Kennedy (D-MA), the leading exponent of the new immigration policy, told the Senate: "[O]ur cities will not be flooded with a million immigrants annually. Under the proposed bill, the present level of immigration remains substantially the same \* \* \* Contrary to the charges in some quarters, S. 500 will not inundate America with immigrants from any one country or area. \* \* \*

Attorney General Nicholas Katzenbach testified that the new policy would not significantly increase immigration, saying the annual quota would be raised from 158,000 to 166,000. Senator Kennedy himself estimated immigration would increase by only 62,000.

The political elite either failed to understand the effect of the law they passed, or they intentionally deceived the country. Because the new law permitted "Chain migration"—immigrants sending for relatives who in turn send for their relatives—total legal immigration grew dramatically from an annual average of 252,000 in the 1950's to about 600,000 by the mid 1980's.

#### THE 1986 IMMIGRATION REFORM ACT

Passage of the 1965 Act coincided with a dramatic population boom in Mexico, with which the U.S. shares an extensive and porous border. Between 1960 and 1980, Mexico's population more than doubled from 34 million to 72 million, unleashing powerful migratory pressures. Despite generous quotas for Mexican immigration, America's southern border was literally overrun by hundreds of thousands of illegal aliens each year. It was the beginning of a national crisis for America that has continued for more than two full decades.

In 1975, long after millions of Mexican aliens had surreptitiously migrated to America, the Commissioner of the U.S. Immigration and Naturalization Service, Leonard Chapman finally admitted, "Illegal immigration is out of control."

In 1964, more than 86,000 illegals were apprehended trying to enter the country. Apprehensions continued to rise in succeeding years, with 345,335 in 1970, 766,600 in 1975, and 1,183,455 in 1985.

Now in 1995, due to the Peso collapse, there are already over 500,000 to 750,000 newly unemployed Mexican workers, threatening the U.S. with new and larger waves of illegal Mexicans.

Despite pleas from Chapman, Border Patrol officers, and besieged American communities, Congress bowed to pressure from ethnic organizations and business interests, steadfastly refusing to increase the funding or the manpower sufficient to stem the tide of illegals.

When Congress finally did act, the result was the Immigration Reform and Control Act of 1986 (known as IRCA). The new law granted amnesty to millions of aliens who broke our laws, and imposed only minor, easily-evaded sanctions on employers who knowingly hired illegals.

Americans for Immigration Control (AIC) strongly opposed the amnesty provision, delivered testimony to congressional committees and actively lobbied against its passage. But after a series of back-room deals, the House of Representatives voted 199 to 192 against removing the amnesty provision.

Rep. Dan Lungren (R-CA) admitted the amnesty was part of a political deal, and said there could be no immigration reform without it. The interest of the American people were caught between agribusiness looking for cheap labor and ethnic pressure groups looking for new members.

The hopes of many Americans that Congress would provide in IRCA the wherewithal to enforce the laws against illegal entry were summarily dismissed. Ethnic advocacy groups claimed that deportation constituted "discrimination."

As predicted by AIC, IRCA failed to stem the invasion of illegals. After a temporary decline, illegal aliens poured across the border by the millions in succeeding years.

Although IRCA authorized the hiring of 1,500 additional Border Patrol officers, Congress never actually appropriated the funds. By 1992, the number of Border Patrol officers was only 100 more than in 1986. Not until 1994, after significant public outrage, did Congress half-heartedly provide a modest increase in manpower.

In 1991, more than 1.8 million foreigners became legal residents of the U.S., more than in any other year of our nation's 200-year history. Among them 1.12 million were amnestied illegal aliens; more than half (946,167) were from Mexico. Thanks to chain migration, they are sending for their relatives who will become a large part of both the legal and illegal flow for years to come.

In November 1992, the Commission on Agricultural Workers created by IRCA reported that the law not only had failed to check illegal immigration, but an abundance of illegal alien farmworkers had flooded the job market, holding down wages that have not improved in a decade. The commission, not surprisingly, discovered that easily-obtained fraudulent ID documents coupled with lax enforcement had handily negated employer sanctions.

The pro-immigration *New Republic* magazine quoted immigration analyst Peter Schuck of Yale Law School who let the cat out of the bag. IRCA, he said, "achieved

its goal; sustaining a basically liberal immigration policy by threatening sanctions that were never intended to be enforced."

#### THE 1990 IMMIGRATION ACT

In 1990, Congress made an intolerable situation worse. That's when they voted to increase legal immigration, despite public opinion surveys showing that fewer than 10% of the American public favored such an increase. Passed as Congress raced to adjourn, the 1990 Immigration Act sponsored by Rep. Bruce Morrison (D-CT) increased the legal quota by an astounding 40%.

"Special interests shaped reform of 1990 legal immigration law" was the headline of a July 1993 Knight-Ridder newspaper article that told the story of how this legislation became law. Reporters Pete Carey and Steve Johnson wrote, "rather than being a thoughtful reform of legal immigration, the shaping of the new law was a bizarre feast for lobbyists." They told how "dozens of \* \* \* deals were cut to help individual businesses, nationalities, or other interest groups, provided they demonstrated the savvy or political muscle to play the game. \* \* \*"

Rep. Bill Richardson (D-NM) a leader of the Congressional Hispanic Caucus, announced in public the names of the special interests backing this grotesque legislative package.

The "fine print" in the new law included other special interest provisions that granted amnesty to illegal aliens who entered to join family members who had already received the previous amnesty.

#### IMPACT OF MASSIVE IMMIGRATION

As a result of the policies imposed by Congress, America is rapidly changing. Immigrants and their children now account for more than half of America's entire population growth, which will drive the U.S. population from 265 million today to 392 million or more by 2050.

Overcrowding, environmental degradation, unemployment, and increasing ethnic conflict are the inevitable results. Worse, an uneducated alien underclass, soon to number in the tens of millions, is being recklessly imported without regard to the impact on our schools, hospitals, and welfare system. Third World conditions have already appeared in our nation's cities.

This "Third Worldization" of America is well underway. In just the last two decades, a vast network of alien colonies from Los Angeles to New York has taken root, establishing unprecedented foreign political and cultural influence.

The great tragedy is that this transformation of our country is being made without the consent of the American people. And unless America's immigration policies are corrected, we will be deprived of passing on our heritage of freedom and plenty to our children and grandchildren.

In conclusion, Americans for Immigration Control supports the following measures:

- Increase funding and double U.S. Border Patrol; assign U.S. military troops to assist as needed until the Border Patrol is increased to at least 10,000.

- Enact a temporary moratorium on all immigration to the U.S.

- End all federal public assistance to non-citizens except emergency health care.

- Increase funding for INS enforcement of laws against the employment of illegal aliens.

- Repeal federal bilingual education programs and bilingual balloting.

- Prohibit affirmative action benefits for non-citizens.

- Impose border-crossing fees to fund immigration control efforts.

Americans for Immigration Control strongly believes that the 104th Congress of the United States must pass in 1995 the corrective legislation that has been needed for so many years.

Thank you.

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STATE OF TEXAS,  
OFFICE OF THE GOVERNOR,  
March 16, 1995.

Re proposals to reduce illegal immigration and to control financial costs to taxpayers.

Hon. ALAN K. SIMPSON,  
*Chairman of the Senate Subcommittee on Immigration,*  
*U.S. Senate, Washington, DC.*

Hon. ELTON GALLEGLY,  
*Chairman of the Bipartisan Congressional Task Force on Immigration Reform,*  
*Rayburn House Office Building, Washington, DC.*

DEAR SENATOR SIMPSON AND REPRESENTATIVE GALLEGLY: First of all, thank you for the invitation to testify before the Committee on the Judiciary on the topic of "Proposals to Reduce Illegal Immigration and to Control Financial Costs to Tax-payers." Although my schedule prevents me from personally appearing and testifying before the Committee, on behalf of the State of Texas I would like to present this written testimony regarding the proposed Immigration Control and Financial Responsibility Act (the "Act").

Despite the efforts of the United States Congress to control immigration by enacting extensive immigration legislation in 1986 and 1990, hundreds of thousands of undocumented immigrants continue to enter and reside in Texas. The United States has failed in its constitutional duty to control illegal immigration, and as a result the State of Texas currently spends millions of dollars annually to pay for the costs of health, educational and correctional services to undocumented immigrants.

This financial burden to Texas can best be addressed by federal legislation in two ways. First, the United States should toughen its immigration laws, and be vigilant in the enforcement of those laws; and the United States Congress should appropriate more money for enforcement to the Justice Department. I support provisions in the Act which provide for greater enforcement of immigration laws.

Second, the United States should reimburse the State for the costs of the health, educational and correctional services that are provided to undocumented immigrants. The United States has already recognized that it has a constitutional obligation to pay the State and their local government for the consequences caused by its failure to fulfill its duties to control illegal immigration. The United States House of Representatives passed a concurrent resolution in 1994 (H.C.R. 218, 103rd Cong., 2d Sess., 140 Cong. Rec. 1210 (1994) [Sec. 35], (entitled "Concurrent resolution setting forth the congressional budget for the United States Government for the fiscal years 1995, 1996, 1997, 1998, and 1999)) which provides:

The Congress finds that

- (a) the Federal Government is solely responsible for setting and enforcing national immigration policy;
  - (1) the Federal Government has not adequately enforced immigration laws;
  - (2) this weak enforcement has imposed financial costs on State and local governments;
  - (3) States must incur costs for incarcerating undocumented persons convicted of State and local crimes, educating undocumented children, providing emergency medical services to undocumented persons, and providing services incidental to admission of refugees under the Refugee Admissions and Resettlement Program; and
  - (4) the Federal Government has an obligation to reimburse State and local governments for costs resulting from the costs described in paragraph (3).

I am fundamentally opposed to Proposition 187 and other similar laws and regulations which would seek to deny basic human services to people residing in the State of Texas. Therefore I disagree with the provisions in the Act which would seek to direct the State of Texas to withhold basic services to individuals within its borders. Instead, the Act should provide for reimbursement to states that incur costs relating to undocumented immigrants. It is unfair to ask the states to pay these costs when they have no constitutional authority or power to control immigration policy.

I am opposed to proposal of a border crossing fee. The border crossing fee is bad for our border communities, bad for Texas and bad for America. Illegal immigration is a national problem, not just a border state problem. The United States should not expect Texas to bear the brunt of a national problem.

Finally, I would like to reiterate my position that a successful immigration policy is only possible with a healthy Mexican economy. Undocumented aliens come to this country for jobs. If we hope to successfully stem the tide of illegal immigrants, then the United States must be willing to provide financial help to Mexico. Their stability of Mexico's economy is very important to the United States' economy and to our immigration policy.

I thank you for this opportunity to present testimony to the Committee on the Judiciary on this very important issue affecting the citizens of the State of Texas.

Sincerely,

GEORGE W. BUSH,  
*Governor of Texas.*

**PREPARED STATEMENT OF THE EASTERN BORDER TRANSPORTATION COALITION,  
SUBMITTED BY IRVING J. RUBIN<sup>1</sup>**

**BORDER CROSSING FEE PROPOSAL WOULD DAMAGE THE ECONOMY OF COMMUNITIES  
AND BUSINESSES ALONG THE U.S.-CANADA BORDER**

The Border Crossing Fee that would be imposed under Part 2 of S. 269 would place a serious burden on commuter, shopping, tourist and freight movements between the U.S. and Canada—primarily in order to deal with illegal immigration from Mexico along the southwestern border.

The proposal should be withdrawn before it does serious damage to the economy of hundreds of communities and thousands of businesses along the border and causes further harm to relations between the U.S. and Canada, the world's largest trading partners.

Clearly, illegal immigration along the U.S. border with Mexico is a serious problem. But taxing individuals who enter the U.S. from Canada in order to handle illegal immigration from Mexico is not the way to deal with the problem. Instead,

The National Guard is already being used to supplement INS and Border Patrol staff on the southwest border and this could probably be increased.

Congress appropriates about \$2.5 billion per year for Customs and INS staffing and operations, but Customs collects about \$15 billion annually. These fees and duties are an appropriate and readily available source of funds to improve security along the Mexican border.

Implements of the oft-suggested recommendation for unified port management, under which either Customs or INS would manage each port of entry, would probably free some funds and personnel for improved operations.

The border-crossing fee would impair the important cultural and economic ties between the U.S. and Canada along the entire border. The 2,000 mile eastern section of the U.S.-Canada border alone, from Michigan to Maine, accounts for 80-85% of U.S. trade with Canada, more than \$175 billion annually and growing steadily.

The majority of this trade moves by highway. The 62 crossings between Michigan, New York, Vermont, New Hampshire and Maine and the provinces of Ontario, Quebec and New Brunswick handled 75 million vehicles in 1992, 40 million of them by tunnel or bridge at Detroit, Port Huron and New York's Niagara Frontier.

The commuter, shopping, recreation and tourism component of this trade is especially sensitive to economic factors and travel and shopping convenience. Fluctuations in currency exchange rates, changes in cigarette and gasoline prices, modification of Sunday closing laws and increases in border-crossing delays have major impacts on the volume and purpose of passenger car crossings by both Americans and Canadians. A fee imposed on individuals entering the U.S. would have a significant effect on motorists who already pay tolls as high as \$4.00 per round trip at many toll crossings.

Commuting, shopping, tourism and freight movements across the U.S.-Canada border are responsible for billions of dollars in trade, retail sales and federal taxes and hundreds of millions in local and state taxes each year. The proposed fee would affect thousands of small retail establishments, restaurants, theaters and sport and entertainment establishments as well as major manufacturers in the U.S., Canada and Mexico.

Federal efforts should be directed toward funding border crossings adequately so as to encourage and facilitate these exchanges, not to burden and discourage them.

The Detroit, Port Huron and Niagara Frontier crossings serve as part of the automobile assembly lines and reliability of travel time is crucial to "just-in-time" operations. But implementation of the border-crossing fee proposal could cause substantial additional delay and congestion at the borders even if confined to automobiles, since auto backup quickly cause truck delays.

<sup>1</sup>Mr. Rubin is a member of the Michigan State Transportation Commission and interim chair of the Eastern Border Transportation Coalition, which is comprised of the Departments of Transportation of Maine, Massachusetts, Michigan, New York and Vermont; the Transportation Ministries of New Brunswick, Ontario and Quebec; and the Buffalo and Detroit area metropolitan planning organizations.

Moreover, either the Canadian government or the operators of border crossing facilities or both might refuse to collect the U.S. tax, particularly in Canada. This would require the erection and staffing of special fee collection booths that would certainly add to delay, congestion and confusion. This is especially likely at locations where the tolls for both directions of travel are collected in Canada.

At a time that nations belonging to the European Union have eliminated almost all inspections, examinations and delays at their borders, the border crossing fee proposal is a move in the wrong direction. It is hardly necessary to mention that the border-crossing fee proposal is inconsistent with the U.S.-Canada Trade Agreement, NAFTA and GATT.

Most importantly, the proposal has already generated opposition and ill will with Canada, America's biggest trading partner and most reliable ally. The border-crossing fee proposal is an idea whose demise is overdue.

**PREPARED STATEMENT OF THE EPISCOPAL MIGRATION MINISTRIES, SUBMITTED BY C. RICHARD PARKINS**

On behalf of Episcopal Migration Ministries, the program of the Episcopal Church which resettles about 3000 refugees annually through 45 dioceses, I would like to offer comments on Senate Bill 269. These comments come from a church body which has witnessed for uprooted and displaced persons for years and has through volunteers and parishes around the United States given practical testimony to "welcoming the stranger" by contributing human and financial resources to the cause of resettlement. These comments also reflect the commitment of our diocesan network that we continue to welcome strangers and adequately serve them once here. As a people of faith we believe that our response must be as generous as the need is staggering.

I would also like to associate myself with the testimony offered by Dr. Elizabeth Ferris, the Director of Church World Service's Immigration and Refugee Program, who spoke before the Committee on behalf of InterAction's Committee on Migration and Refugee Affairs. The issues raised and views expressed by Dr. Ferris parallel those of Episcopal Migration Ministries. My comments will highlight the concerns which we think especially germane to the discussion of refugee and immigration affairs in the United States.

Of fundamental importance is the absolute need to secure admissions into the United States and to offer resettlement at a level commensurate with the vast international refugee crisis which faces us. While the magnitude of that crisis can only be incrementally effected by a more generous U.S. admissions policy, to engage in a more restrictive policy at this time signals to the international community that we are either indifferent to the many crises around the world or have retreated from the moral leadership that we imagine ourselves to express. This leadership is communicated by our willingness to invite some of the victims of these tragedies into our country. Resettlement is an important alternative for some number of vulnerable persons who might otherwise perish. Resettlement is also significant in conveying to ravaged people everywhere and to those who give them safety that the US is a partner in addressing their tragedy. To retreat to a ceiling of 50,000 refugees, even with the possibility of added numbers coming through a more arduous Congressional process, sends a chilling message to a world in despair.

An important aspect of refugee resettlement in the United States is the poignancy of the message which comes from a refugee who has been saved. There are communities around this nation who understand the anguish and pain of uprootedness because they have welcomed the uprooted into their communities. Safety often came to these sojourners with their arrival in the U.S. An important benefit which comes from a willingness to admit a number of refugees into the U.S. is heightened awareness among Americans that they are connected to an international disaster and, moreover, are able to make a contribution to its resolution.

There are those who believe that being connected to the larger community of which we are a part is basic to who we are as a people of faith. That connectedness is helped by extending hospitality to those strangers who need the safety which we can provide. This benefit itself would not be the sole reason for our position were it not for the compelling need for protection which we know exists and which has been convincingly documented by other witnesses.

The issue is not so much the "right ceiling" but rather an acknowledgment that a reasonable number of refugees need resettlement in the United States. If the test of vulnerability were to be applied and if prospects for other "durable solutions" examined, we believe that a fair admissions policy would result. An important caveat

to this assertion is the realization that our government as well as the UNHCR must have the will and resources to process prospective candidates for U.S. resettlement.

A perspective which has surfaced in many parts of our nation and which often finds support in legislation is the notion of penalizing certain beneficiaries of our system to correct abuses. This point of view has been all too prevalent in the refugee and immigration debate. The abolition of Executive parole authority illustrates this situation. For example, we would hope that some abuses of the President's parole authority would not result in the wholesale scuttling of this authority, particularly when we consider the large number of persons who are safe because the US could respond to overseas crises. Given widening circles of human displacement, a broadening rather than a narrowing of our ability to handle the human consequences of such displacements is needed. To inadvertently punish those who would be legitimate beneficiaries of parole seems neither moral nor prudent.

The same principal pertains to the issue of benefits. While some refugees and immigrants have abused federal programs, the evidence does not support policies which would seriously curtail access to the safety net services which many immigrants need and which, if not available to them, would limit their participation in American life and endanger not only their well-being but that of the communities of which they are a part. The intent may be reform; the result is punitive. There seems to be no balancing of the equation in favor of those in genuine need who use the system for its intended purpose. Public or Congressional ire may not be the basis of good policy.

We would finally request that the members of the Committee be sensitive to the consequences of mingling immigration and refugee reform in a single piece of legislation. Also, combining a number of key legislative measures, all of which require full debate and deliberation, into an omnibus bill adds confusion to the debate and hampers our ability to produce both a just and fair immigration policy as well as a just and fair refugee program. All of the changes under consideration, if not addressed separately and carefully, could lead to the dismantling of systems which, although flawed in parts, have effectively served this nation and the immigrants and refugees whom we seek to help.

Let me share a letter from a Bosnian refugee who speaks eloquently to our mission and the urgency of maintaining a generous admissions policy and accessible avenues of safety for those fleeing persecution. This letter is written to express thanks to parishioners in Greenville, North Carolina who contributed their time, money, and care to welcoming strangers.

The sentiments of this letter could be easily multiplied across the country from those who have been the beneficiaries of resettlement. We believe that accounts such as this need to be heard as we contemplate closing doors to needy refugees.

GREENVILLE, NC, September '94.

DEAR FRIENDS, Allow me to tell you a few words. Because my bad English I hope that you will forgive me about grammatical mistake. Before we came to Your and Our North Carolina, in Your and Our beautiful town Greenville, we felt a fear of unknown country, unknown people, their habits and great uncertainty. Our nervousness was big at that time and our hearts were beat very fast.

On Raleigh airport when we first time met you, when we saw smiles on yours friendly faces and your sincerely happiness, our fear and nervousness completely disappeared. That is the way our parents used to welcome us after a long absence. For everything You have already done and still doing for us, we can not find right words to express our thankfulness and our enthusiasm. We like our country Bosnia and Hercegovina, our born town Mostar, our parents, relatives, friends and we like them immeasurably but we had to escape in order to save our childrens and our's lifes. We were looking just for peace, piece of bread and roof above our heads, but you gave us a beautiful home, even better than we had in Mostar. But more important is that we met a new friends true friends, true care and love. you opened the door of future to our childrens and thank you for that. The voice about your goodness is traveling now in all parts of the World.

North Carolina is our now country and Greenville is our second Mostar. Only thing that we can do is our great wish to justify your confidence. Dear Friends thank you for everything. God bless you all.

#### PREPARED STATEMENT OF THE HEBREW IMMIGRANT AID SOCIETY

The Hebrew Immigrant Aid Society is the international migration agency of the American Jewish community. Since its founding in 1880, HIAS has assisted in the resettlement of four million Jewish and non-Jewish refugees in the United States

and elsewhere. In recent years, this agency's efforts have been focused upon helping Jewish refugees from the former Soviet Union escape from a threatening environment to reunite with family members in this country.

**Section 174. Requirements of a Congressional Approval for Admission of More than 50,000 Refugees in a Fiscal Year.** Limits refugee entries to 50,000 unless Congress specifically approves a higher number.

While the direction of U.S. foreign policy is well beyond the scope of this hearing, we would like to reiterate our belief in the affirmative role of the U.S. refugee admissions program as part of our greater international role in protecting and assisting refugees even as we strive to address root causes.

1. The U.S. refugee admissions program provides a crucial pulpit for expression of our humanitarian, strategic and political concerns.

Third-country resettlement in the U.S. is obviously not an all-encompassing solution for refugee displacement, but in addition to the tens of thousands of individuals who benefit from the protection it offers, the program allows the United States Government to demonstrate its leadership, both at home and abroad.

The current worldwide migration crisis clearly will engage the international community for some time to come and will demand continued leadership and involvement on the part of the U.S. Government. Any objective assessment of the refugee population and the underlying causes underscores the greater need for a sizable program. In this light, we are very concerned about the political, strategic and humanitarian implications of a proposal that would effectively affirm a significant reduction in refugee admissions to the U.S. by establishing the ceiling at 50,000 visas per year, unless specific action is taken by both Houses of Congress.

The 50,000 visas as an appropriate ceiling mentioned in the Refugee Act of 1980, most strikingly reflects the Act's origins during the cold war. Just as the communist governments suppressed the ethnic and nationalistic impulses of its peoples, they also installed bureaucratic, penal and physical obstacles to restrict outflow. This allowed the U.S. Government the illusion of control and predictability when the volume of the refugee flow from communist countries was actually inhibited by their own oppressive conditions. Now, there is more overall "ease" of movement, but many more tragically find that their safety and right to remain in their countries of origin are increasingly compromised. The challenge before us is to cope with explosive refugee crises as they unfold due to underlying conditions that are equally explosive, uncontrolled and unanticipated.

There is otherwise no obvious corollation between the interests of the United States in the current crisis and the number 50,000 as is proposed in this bill. What will be understood will be the message that this issue does not sufficiently engage this government or the American people and that the actions and threats by the perpetrators are of little or no consequence to the United States. U.S. interests will not be served if our credibility is undermined on an issue that demands international cooperation in search of comprehensive, long-term solutions to these crises.

We have no illusions that the admission level, however high and however allocated, can address the magnitude of the current refugee crisis and the needs of all those in distress. We are now witness to mass movements of people; these movements trigger political events as much as the events themselves stimulate movement. The dire needs of millions of people fleeing over a period of several days are overwhelming, both operationally and emotionally. In the coming year, this will require the attention and cooperation of sovereign governments, the voluntary agencies and the NGO's to implement new and innovative ways of coping with mass and seemingly sudden turmoil. During this time, it is more important than ever to recognize and to anticipate threatening situations before the crisis becomes overwhelming.

Meanwhile, in the current environment, the crises seem to dwarf the capacity of existing protection programs, but we cannot allow what we cannot do to interfere with what we can do even as we contemplate new options. The U.S. admissions program is successful in what it does accomplish and we must find ways to extend its protection to meet current needs.

Although this bill and this statement are not the forum to explore operational matters relating to the refugee admissions program, we must comment briefly on the linkages that have been made concerning the validity of certain refugee admissions and the fact that refugees are departing directly from countries of origin. It is a fact that the concept, construct, and implementation of a "managed migration" program belong to the United States Government. Whatever

the relative merits and flaws inherent in this decision, its application to refugees from Southeast Asia, the former Soviet Union, Haiti and Cuba is clearly an attempt by the United States to provide some system of control over mass refugee flight while acknowledging and addressing the well-founded fears of the applicants and in that spirit, this version of refugee admissions has become an aspect of the current refugee program. In addition to the awkward position presented to the refugee in this situation, it is an insidious and unacceptable syllogism to oversee the implementation of a managed migration program and then discredit the merits of the refugees' claims on the basis of their participation in an operation devised by the U.S. Government.

2. We anticipate a dialogue and discussion to ensure the continued relevance of the program in a fast-changing world. It is expected that this will be the subject of attention of the Administration and the Congress through consultations and hearings to be held in the coming months. We therefore oppose the inclusion of section 174 as part of the Immigration Control Act as proposed, both on the merits, as states, and because we believe that a summary legislative "fixing" does not respond to the complex questions raised that are best addressed elsewhere.

However, any discussion of the future allocation of such numbers should not be confused with the conviction that the refugee admissions program is a critical component of worldwide refugee protection and has, in fact, been successful within the United States. The U.S. refugee program continues to be an example of a highly effective public/private partnership, through which hundreds of thousands of refugees fleeing fear and oppression have been successfully resettled. These refugees and their children have contributed immeasurable to the economy, the culture and overall community of this nation. Finally, through the operation of the viable and generous refugee admissions program, the United States is able to provide a projection of itself as a world leader and is able to express in a tangible way the values for which it stands.

#### PREPARED STATEMENT OF THE IMMIGRATION AND REFUGEE SERVICES OF AMERICA

Immigration and Refugee Services of America (IRSA) is a national, nonprofit, non-sectarian organization concerned with people in migration. At the local level, IRSA works through a network of 36 affiliate agencies to resettle refugees and provide immigration services. At the national level, IRSA advocates for fair and humane public policies toward newcomers. Internationally, primarily through the U.S. Committee for Refugees (USCR), IRSA works to assist and protect refugees and internally displaced people around the world; USCR publishes the annual World Refugee Survey, the monthly Refugee Reports, and numerous issue briefs. IRSA also operates a direct social services project in Croatia, Prijatelj Projekt, providing specialized social services for young refugees and displaced persons affected by war.

IRSA is one of the national voluntary agencies that resettle refugees through the State Department's Reception and Placement (R&P) program. IRSA is a member of InterAction's Committee on Migration and Refugee Affairs.

With over 75 years of addressing the needs and rights of persons in forced or voluntary migration, IRSA and its affiliates have a deep and longstanding concern for U.S. refugee and immigration policies and programs. Policies designed to protect persons fleeing persecution and war, to reunite families, and to provide hope and economic opportunity, reflect the best of this nation and serve the long-term interests of all its people.

We commend Senator Simpson and the Subcommittee's effort to review and strengthen the immigration law to prevent abuses in the system while remaining true to this country's founding principles of freedom, due process, and opportunity. IRSA supports these goals and welcomes the opportunity to work with the Subcommittee to achieve these goals. It is in this spirit that we offer the following comments on selected provisions of the "Immigrant Control and Financial Responsibility Act of 1995."

#### SECTION 174—REFUGEE ADMISSIONS

This section would limit the annual admission of refugees to 50,000 and would require Congressional approval for a higher number, except in a refugee emergency. The rationale for this provision appears to be the 1980 Refugee Act's establishment of 50,000 as the "normal flow" of refugees to be resettled in the U.S., and the fact that admissions during the 15 years since the Act have exceeded that level.

It is important to consider that the 50,000 "normal" admissions level was calculated by simply dividing the number of refugees admitted during the 1970s by ten. Admissions went from 146,000 in 1975 to 27,000 the next year, back up to

111,000 in 1979; this reflected primarily the Southeast Asian caseloads. In the next decade, admissions ranged from a high of 207,000 in 1980 to a low of 67,000 in 1986, reflecting not only the continuing flows from Southeast Asia but also the wars in Afghanistan and Ethiopia, the on-again, off-again manipulation of the freedom of movement by Communist governments from Havana to Moscow, the collapse of the former Soviet Union, and new crises elsewhere in the aftermath of the Cold War. One glance at international headlines reveals that there is no "normal flow" with respect to refugee movements. Worldwide, the number of persons classified as refugees has risen by nearly seven million in the last ten years, to the current sixteen million.

It is true that the U.S. refugee admissions program is discretionary and that we can and do choose how many refugees to admit on an annual basis. We can operate this program in as orderly and predictable a fashion as we like, irrespective of the worldwide need. However, it is this predictability that has drawn criticism from those who recognize that refugee crises are neither orderly nor predictable, and that any country wishing to respond to these crises must be flexible.

Even with the unpredictability of situations that create refugees, the admissions program does require some planning, including the establishment of worldwide and regional admissions ceilings. These ceilings are set by the Administration each year, based on current data from refugee processing posts and U.S. political and financial concerns. During the current fiscal year, up to 110,000 refugees will be admitted to the U.S. Of those, 48,000 are from the former Soviet Union and Eastern Europe combined, with up to 40,000 coming from the former Soviet Union alone. Another 40,000 will be from Southeast Asia. Together, these two regional ceilings represent 80% of admissions. Although both programs are now in a phase-down mode, the U.S. is strongly committed to their continuation for the immediate future, for reasons that serve U.S. interests and Congressional mandates.

The question causing concern among refugee protection advocates is the future of refugee admissions. The Administration's budget proposal for FY 1996 assumes a refugee admissions ceiling of 90,000, 25% less than the ceiling two years ago. This reduction is primarily due to declining caseloads of eligible refugees from Vietnam. The phase-out of the two major refugee streams can be viewed in either of two ways: as a justification for systematically decreasing the admissions ceiling, or as an opportunity to respond to the needs of the world's most vulnerable refugees for whom resettlement is the only appropriate option.

There is no magic to the current admissions level of 110,000. With 16 million refugees in the world (and another 25 million internally displaced persons), we will never be able to resettle each person for whom it is appropriate. However, 110,000 admissions does not represent a significant burden on the U.S., representing only about 55% of our highest annual total of 207,000. There is little doubt that out of 16 million, there is no shortage of persons in need of our protection. Resettlement is an integral part of worldwide refugee protection, complementing the overseas assistance efforts of the U.S. and our international partners.

Resettlement also acts to relieve the pressure on countries of first asylum—mostly developing nations—hosting large refugee populations, often indefinitely. Last year, Tanzania admitted about 250,000 Rwandans in a 24-hour period, and over 1 million Rwandans later entered Zaire. Pakistan has played host to over 2 million Afghans, while Iran hosted almost 3 million (these figures put in perspective the U.S. calls for "international burden sharing"). About 40,000 Vietnamese still remain in first asylum camps in Southeast Asia. The prospect of third-country resettlement for even a small percentage of refugees has allowed first asylum countries to keep their door open for much larger numbers, often at a time when they themselves are struggling to respond to the needs of their own citizens. In addition, U.S. admissions prompt resettlement offers from other countries, which carefully monitor our refugee and immigration policies.

With the decline of admissions from Southeast Asia and the former Soviet Union, the number for whom it is appropriate to offer resettlement may indeed decrease. Or, it may not. It may increase sharply, given the level of ethnic and national instability worldwide. We must bear in mind that resettlement is not simply a numbers game. It is the option for those refugees who have no other options for local integration or repatriation. With the increase in ethnic, religious, and nationality-based persecution, an increasing proportion of refugees will not be able to go home or to be accepted within their regions. Bosnian Muslims (and, particularly, members of Muslim-Croat or Muslim-Serb mixed families) are but one example. The point is that we cannot accurately predict the refugee picture even two or three years from now. A statutory cap in refugee admissions is not justified by the worldwide situation or by domestic needs.

Decreasing the admissions level too quickly may well have dire consequences. As has been mentioned, the continued resettlement of persons from the former Soviet Union and Southeast Asia serves U.S. interests, to which there is a strong and continuing commitment. Resettlement of the Southeast Asian caseload will likely be completed with the admission of 30,000 in FY 1996. However, estimates of the current former-Soviet caseload stand at approximately 135,000 to 160,000, which will mean admissions of 40,000 per year for the next three to four years. A cap of 50,000 admissions as early as FY 1997 would allow only about 10,000 admissions from the rest of the world. To believe otherwise would be to ignore political reality. Currently, about 30,000 refugees are admitted from regions other than the former Soviet Union or Southeast Asia. Many of these are among the world's most vulnerable refugees, including Somalis, Rwandans, Bosnians, Iraqis, and the small number of Haitians we have admitted. Forcing this total down from 30,000 to 10,000 would be an unconscionable abandonment of U.S. commitment to refugee protection.

The possibility that emergency refugee admissions could take place has been used to justify a decrease in the annual ceiling. It should be noted, however, that the emergency admissions process has been used only twice in fifteen years—once for Vietnamese and once for Soviets. The U.S. did not utilize this process for the refugee crises of Bosnia, Haiti, Rwanda, or elsewhere. This is due in part to the limited vision of the use of resettlement on the part of the State Department's Bureau of Population, Refugees and Migration. The Bureau's inflexibility and anti-resettlement bias have prevented them from being the effective advocates for refugee protection needed within the Administration. Given the current anti-foreigner climate in the U.S., in which the distinctions between categories of migrants are often blurred, it is doubtful that emergency refugee admissions are a realistic option for the foreseeable future. This is particularly true since emergency admissions require emergency appropriations of funds.

Providing refuge from persecution is at the core of this nation's heritage and remains one of its most significant achievements. The importance of the task speaks to the need to consider very seriously its nature and scope. The humanitarian and political goals that define our refugee program must be weighed carefully both against each other and against the other issues that demand our resources. The selection of refugees for U.S. admission is not to be undertaken lightly, and access to the program should not be denied—at the expense of the most vulnerable refugees—by the single, arbitrary act of placing a statutory cap on admissions. The world is too uncertain for too many people. The United States has led the world community in building an international system of refugee protection and assistance. The world is watching us now. We are key in seeing that this system prevails. The U.S. should maintain the flexibility and the commitment to protecting those most in need.

#### SECTIONS 136, 137 AND 171—FALSE DOCUMENTS

Section 136 would make an alien who presents a false document to a common carrier for entry into the U.S. excludable, and would make an alien excludable if he or she presents a document to a common carrier and later fails to present it to the INS at arrival. Section 137 provides that an alien excludable because of document fraud may not receive the benefit of certain defenses to deportation, subject to a "credible fear of persecution" exception, dealt with in a special proceeding. Finally, Section 171 includes restrictions on the filing of asylum applications by aliens using documents fraudulently or by excludable aliens apprehended at sea, subject to a "credible fear of persecution" exception.

What these provisions have in common, and what makes them so threatening to the lives of so many people, is the failure to recognize the frequent necessity of false documents in a refugees' flight from persecution. This phenomenon has existed throughout history, including during World War II when, as one notable example, Raul Wallenberg helped so many Jews escape Germany through the use of false papers. Persons in fear for their lives do not normally receive travel documents from their persecutors.

Refugees who request asylum at ports of entry are often compelled to escape through the use of false documents, either because there is neither time nor opportunity to acquire appropriate documents or because applying for or carrying such documents would endanger them. Summary exclusion proposals that would give low-level INS officers at ports of entry the final authority to make life-and-death decisions, without appeal, must be rejected. We should not impose additional obstacles to a fair hearing and adjudication of one's claim to refugee status. It is ironic that while the Board of Immigration Appeals once looked skeptically at asylum-seekers fleeing with *valid* documents, there is now a presumption of abuse on the part of

persons with false documents. In reality, persons who find it necessary to use such invalid papers are often those with the strongest fears of persecution.

Because persons entitled to asylum may face torture, imprisonment, or death as a result of an erroneous decision, safeguards are necessary to ensure a fair and accurate determination. The American way is to preserve asylum rights and due process protections for victims of oppression. The law must distinguish between those who use fraudulent documents, by necessity, to flee their countries and those who for other purposes present fraudulent documents in the U.S. A system that offers a quick yet fair decision to asylum applicants will deter abuses in system and also protect true refugees.

The Cold War is over. Flight from Communism, while it still occurs, no longer represents the major basis for asylum claims. Ethnic and nationality-based persecution is now prevalent throughout the world, and such persecution often follows new and unfamiliar patterns. Asylum adjudicators face the difficult but vital task of discerning the many legitimate claims of persecution and ensuring that the newest victims will be protected. Summary procedures increase the likelihood that true refugees will not be able to fully present their claims and will be returned to the hands of their persecutors.

#### SECTIONS 161 AND 162—PAROLE AUTHORITY

Sections 161 and 162 would limit the Attorney General's parole authority and change the existing rationale for that authority. The sections would require case-by-case determinations and provide that the number of parolees who remain in the U.S. for more than a year would be subtracted from the world-wide level of immigrants for a subsequent year.

The use of the broad parole power provides critical flexibility in many circumstances. With the inherent limitations of a governmental planning process, such authority is necessary not only on an individual basis but also to fashion a timely humanitarian response to many migration emergencies.

In an emergency situation, especially with large numbers of people, parole permits the U.S. to respond with flexibility and speed. Parole has been a means of admitting on an exceptional basis persons who do not meet the strict criteria for refugee status but whose admission, at their own expense, is nevertheless in the public or humanitarian interest of our country.

Whether for a medical evacuation, family reunion, or political interests, the parole authority is an invaluable tool of the Executive. To take away this tool would be to do a tremendous disservice to numerous individuals as well as to the U.S. national interest.

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#### PREPARED STATEMENT OF THE NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM, SUBMITTED BY KAREN NARASAKI

The National Asian Pacific American Legal Consortium (NAPALC) is a non-partisan organization formed to advance the legal and civil rights of our nation's 7.3 million Asian Pacific Americans through public education, public policy analysis, and litigation. The Asian Law Caucus, Inc., one of NAPALC's founders, has for the past twenty years provided direct legal services to thousands of low income families and seniors in the San Francisco Bay Area. NAPALC's other founding organizations are the Asian Pacific Legal Center of Southern California and the Asian American Legal Defense and Education Fund in New York City.

#### INTRODUCTORY REMARKS

We wish to begin by acknowledging the statements made by the Chairman and others in this chamber expressing support in principle for the maintenance of a safety net for legal immigrants. The maintenance of a safety net for legal immigrants we believe is based upon both sound policy and basic notions of fairness. It is also in keeping with the bipartisan recognition of the positive role legal immigration plays in our society.<sup>1</sup>

At the same time, we understand that this subcommittee is concerned about abuses of the present system, abuses which some have associated with the fiscal is-

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<sup>1</sup> See e.g., U.S. Commission on Immigration Reform, *U.S. Immigration Policy: Restoring Credibility*, (1994), pp. xxiii, 128-29 (bipartisan commission recommending against "any broad categorical denial of public benefits to legal immigrants"). For an economic perspective on immigration during President Reagan's Administration see, Council of Economic Advisors, *The Economic Report of the President*, (1986), p. 222 ("the net effect of an increase in the labor supply due to immigration is to increase the aggregate income on the native-born population").

sues most recently articulated by the General Accounting Office.<sup>2</sup> We share the concerns expressed by subcommittee members about abuses of the system. Abuses of the public assistance system do not serve the public in general and they particularly harm those truly in need. However, we are concerned that in an effort to address perceived abuses that Congress may adopt policies which may cause serious injury to thousands of deserving families and seniors.

Thus we address our comments today to some of the effects of the present bill before this subcommittee, SB 269, effects which we assume are neither intended nor desired. We hope by bringing these issues to the attention of the subcommittee any final legislation can be crafted to better reflect its intended purpose.<sup>3</sup>

#### **SB 269 UNREASONABLY EXPANDS THE DEFINITION OF WHO IS CONSIDERED A PUBLIC CHARGE**

SB 269 restricts immigrant access to four specifically described federal programs, Aid for Families with Dependent Children, Medicaid, Food Stamps, and the Supplemental Security Income program. The inclusion of these programs is not inconsistent with present definitions of how an immigrant may be considered a "public charge." But the bill also restricts access to almost *all* other federal, state, and local programs "for which eligibility is based on need." (SB 269, § 203(a)).<sup>4</sup> Utilization of any of these programs may result in deportation of the immigrant and the liability of the immigrant's sponsor.

The establishment of such a broad and undefined exposure to deportation and/or financial liability is without precedent. The rule would create a minefield for immigrants and their sponsors. Suddenly, participation in virtually any community service program would be fraught with danger. A child's participation in a city funded after school program may result in the family's possible deportation. Likewise receipt of services from a legal aid office or enrollment in a state pre-natal education class could be grounds for deportation or a subsequent charge against the sponsor.

There is no reason to expand the range of "needs based" programs for which participation may define an immigrant of being a "public charge." Many needs based programs assist in making immigrants more productive members of our community and have never been considered to be a form of "welfare." Job training, first time home buyer programs, small business counseling, child care, and other social programs may be "needs based" but should not become traps for immigrants seeking full participation in American society. Again, we assume that this was not the intended result of SB 269 and we urge that these provisions be omitted from the bill.

#### **A BLANKET EXTENSION OF THE DEEMING PERIOD WILL RESULT IN SEVERE INJURY TO THOSE DESERVING ASSISTANCE**

SB 269 proposes a blanket and indefinite extension of the period for which the income of an immigrant's sponsor will be attributed to the immigrant. Only upon the naturalization of the immigrant will the deeming period be terminated.

The underlying assumption of the deeming policy is that sponsors of immigrants should be responsible for the care of the immigrant. We have no dispute with this basic assumption. The present law provides for deeming of sponsor's income in certain circumstances for up to five years from the date of an immigrant's entry. However, SB 269's blanket and indefinite extension of the deeming period is unreasonable and will result in a terrible human toll on many families.

First, the proposed change disregards the rationale of the present policy of applying a deeming period for a fixed and reasonable period of time. While a sponsoring family or individual may be able to reasonably anticipate or plan for assisting an immigrant for a finite period of time, the longer that period the greater the likelihood of unanticipated events. As we all know, one unanticipated illness or layoff can be disaster to most families' financial security. Even a sponsor who acts with the

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<sup>2</sup> Given the recent release of the GAO's report on the subject we have not completed our review of its conclusions. However, initial comments we have received from other experts on the subject suggest that the report may rely upon certain faulty assumptions. We are therefore conducting a further review of the GAO's report.

<sup>3</sup> We limit our comments on SB 269 at this time to those relating to the question of immigrant eligibility for public assistance. We will provide further comment on other aspects of the legislation at another time.

<sup>4</sup> The only exceptions are set forth at Sec. 201(a) (including emergency medical services, school lunches, etc.).

utmost of caution and responsibility can suffer an event which makes it impossible to provide necessary support. The proposal fails to reflect this reality.<sup>5</sup>

Second, the approach taken on deeming of sponsor's income imposes the harshest burden on moderate income Americans. Consider for example, the situation of a working family which sponsors a relative as an immigrant. If many years later the immigrant is diagnosed with cancer and has no health insurance, under SB 269 the immigrant would be ineligible for even basic medical assistance until the sponsoring family itself reached the point of destitution. If the sponsoring family operates a small business, that business as well as any savings for education or retirement may have to be liquidated in order to pay for medical bills. In the end, by indiscriminantly denying assistance to an immigrant based upon a sponsor's even modest income, the proposed policy will result in a domino effect dragging an entire American citizen family into poverty with dubious long term cost savings.

Finally, in rigidly applying an income deeming approach in all cases, SB 269 does not accommodate circumstances in which it is plainly inappropriate. For example, as we all know, instances of domestic abuse exist in all sectors of society. For immigrant women, however, domestic abuse is a particular threat where the spouse is also their U.S. citizen sponsor. Thus last year this Congress approved the Violence Against Women Act (VAWA) with broad bi-partisan support enabled victims of abuse to leave violent marriages without fear of deportation.<sup>6</sup> SB 269 will make the protections of the VAWA meaningless in many cases by denying federally funded shelter, legal services, and other assistance to the victims of abuse and their children, victims who rarely have any other resources of their own to survive upon leaving an abusive husband.<sup>7</sup>

For each of these reasons, an extension of the deeming period without accommodating the particular circumstances of the sponsors and of the immigrants would be unwise and unfair.

#### CONCLUSION

We raise the above concerns as examples in which the present SB 269 imposes restrictions on immigrant access to public assistance which are over broad and too extreme. Denying nutrition, medical care, income supplements, job training, and other services solely on the basis of non-citizen status ignores the contributions of immigrants to this country. While providing limited assistance to some, SB 269 will deprive assistance to a significant number of other deserving of assistance.

Moreover, an indiscriminant exclusion of immigrants from services only distracts from the need for more specific reform. We hope that this committee will adopt a more measured response to a concern we all share.

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#### PREPARED STATEMENT OF THE SAN DIEGO COUNTY BOARD OF SUPERVISORS, SUBMITTED BY DIANNE JACOB

Illegal immigration is inextricably tied to the fiscal well-being of the County of San Diego. Illegal immigration imposes substantial, unreimbursed costs on the

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<sup>5</sup>Indeed, in contrast with present law, the proposal for an indefinite extension of the income deeming method makes no adjustment for unforeseeable events. For example present eligibility requirements for the SSI program mandates a five year deeming of sponsor's income but does not apply this provision where the immigrant becomes blind or disabled after being admitted to the United States. See 42 U.S.C. 1382(j)(1).

<sup>6</sup>One of the VAWA's provisions provides for battered women immigrant women who are married to U.S. citizens or lawful permanent residents to gain legal status on their own without having the abusive husband file the initial papers. This allows these victims of violence to leave abusive situations without fear of deportation. Violence and Women Act, Pub. L. No. 103-322, Title IV, Sec. 40701.

<sup>7</sup>The example of battered immigrant spouses is illustrative of why the option of naturalization does not make citizenship a sensible criteria for applying a deeming test. In order to become eligible for naturalization, generally legal immigrants must have resided in the U.S. for a minimum of five years and must pass a test in English. For many immigrants who work long hours with limited opportunity to study, the language test is an insurmountable barrier. Also, naturalization is only an option for adults. Immigrant children under the age of eighteen cannot become naturalization citizens. (R. Patrick Murphy, Ed., 1994-95 Immigration and Nationality Law Handbook, pp. 493-504.) In addition to the substantive barriers, the Immigration and Naturalization Service has a long backlog in processing applications for citizenship. For example, in Los Angeles an applicant eligible for naturalization must wait approximately two years before they are even offered an interview by the INS. (Interview with Bill Hing, Professor of Law at Stanford University (February 1, 1995).) Obviously, a battered spouse or someone stricken by some unanticipated illness or injury cannot wait to complete the naturalization process in order to access essential social services.

County because the federal government does not control the border between Mexico and the United States.

San Diego County's southern border is also the border between Mexico and the United States. San Diego County has the world's busiest port of entry, and the highest number of apprehensions of illegal aliens of any sector in the United States. What may appear abstract to those of you who live thousands of miles away is a harsh reality to those of us who must daily address the impacts of illegal immigration.

I would like to share with the subcommittee the hardships my county experiences because of illegal immigration, San Diego County's recommendations to curb and control illegal immigration, and a request for federal compensation of the costs incurred by San Diego County in providing services to illegal aliens.

#### IMPACT ON SAN DIEGO COUNTY

Because it is a clandestine activity, the scope and impact of illegal immigration must be estimated. However, there is no question that the impact of illegal immigration on California state and local governments is substantial. In 1993, a report prepared for the California State Senate concluded it costs San Diego County nearly \$70 million annually to process illegal aliens through our criminal justice system, and provide health and social services to illegal aliens and their children. This figure represents over 16.7% of the County's general fund revenues. We literally cannot meet the needs of lawful residents because we are spending our limited resources on persons who are in the country illegally.

Our jails detain, on an average day, 600 illegal aliens inmates under INS hold. The larger number of illegal aliens in our jails exacerbates the overcrowding we are experiencing. In fact, the County jail system is under court-ordered population cap.

#### REIMBURSEMENT OF COSTS AND OTHER RELIEF

The County seeks full reimbursement for all costs it incurs as a result of illegal immigration. Illegal immigration has its greatest impact on the County's criminal justice system, over \$50 million annually according to the California State Senate study. We believe the federal government should reimburse the County for its costs of apprehending, detaining and adjudicating illegal aliens who violate California laws.

The County has taken steps to limit its expenditures for health care provided to illegal aliens. However, to protect the public health, the County still incurs costs to prevent the spread of communicable diseases.

Under California law, San Diego County has a 2.5 percent share of the cost of AFDC grants and a 60% share of the AFDC Foster Care program. We believe the County should be reimbursed for its cost of providing AFDC to citizen children of illegal aliens and foster care services to illegal alien children.

Further, the matching funds requirements in the 1994 crime bill compounds the fiscal harm done by illegal immigration. Local funds that could have been used to provide the required matches instead go to meet the operational demands created by illegal immigration. Accordingly, the County urges Congress to waive any match requirements for areas significantly affected by illegal immigration.

Finally, the County supports measures that would authorize involuntary incarceration, in the country of origin, of any alien eligible for deportation as a result of illegal entry and conviction of a criminal offense.

#### STATE CRIMINAL ALIEN ASSISTANCE PROGRAM

While we appreciate the initial efforts Congress has made to reimburse state costs of incarcerating criminal illegal aliens, problems remain in getting funds to local governments. The 1995 Department of Justice appropriations bill and the House-passed version of HR 667 provide for reimbursements only to states. Congress should allow local governments to apply directly to, and be reimbursed directly by, the federal government for costs incurred in housing criminal illegal aliens in local detention facilities.

#### CONTROLLING ILLEGAL IMMIGRATION

San Diego County would like to offer some concrete proposals for changes to federal law that would bring illegal immigration under control. Earlier this year, the Board of Supervisors, adopted a legislative policy that outlines the changes the County believes are necessary. Attached is a copy of that policy.

Our policy supports the removal of incentives for persons to enter the United States illegally. First, we believe that illegal aliens should not be eligible for govern-

ment-funded services because free services act as a magnet for illegal immigration. The prohibition must include education, social services, and health care. Further, we support a change to the Fourteenth Amendment to the Constitution that would provide that children born in the United States to illegal aliens would not automatically become citizens of the United States. Such an amendment would break the link that allows taxpayer funds to subsidize illegal alien families through the AFDC program. In 1992, Medicaid paid for 6414 births in San Diego County to women who were in the United States unlawfully. Statewide, there were 95,845 Medicaid-funded births to illegal aliens. The California State Senate study noted that 51.5% of illegal aliens who deliver babies in San Diego County under the "medical emergency" provisions of Medicaid subsequently apply for AFDC on behalf of their children.

We also support a change to the definition of "medical emergency" to eliminate the phenomenon of "scheduled emergencies." We have seen all too many cases of individuals with chronic conditions receiving care in their own countries, and then entering the United States for more sophisticated care funded by Medicaid.

Employment is the largest attraction for illegal immigrants. The sooner employment opportunities for illegal aliens disappear, the sooner our borders will come under control. A step that would go far in deterring the employment of illegal aliens would be the issuance of tamper-resistant identification cards that would be required as proof of work eligibility for all who seek employment. Congress should enhance the ability of INS to detect and sanction employers that hire illegal aliens. Congress should also require INS to educate employers, in areas that have significant illegal alien populations, about their obligation to hire only persons authorized by law or regulation to work in the United States.

San Diego County supports a substantial increase in the availability of Border Patrol resources along the southwestern U.S. border, particularly for enhanced efforts such as Operation Gate-keeper and the operation in El Paso, Texas. Greater certainty of apprehension at the border will deter attempts at illegal entry. We also support augmented efforts to combat alien smuggling, including longer sentences, larger fines, and the use of wiretaps to assist alien smuggling investigations.

After careful consideration, the Board of Supervisors decided to support imposition of a border crossing fee to fund increased border control operations and training. However, our support has some conditions. First, a border crossing fee must be reasonable in amount, e.g., \$1 per person. For frequent border crossers, a monthly reduced rate should be considered. Second, the proceeds of the fee must be retained in the local area in which the fee is collected, to be used exclusively for the purpose of expanding the capacity of officials in the local area to manage the problems of both legal and illegal immigration. Third, border crossing fee revenue must not be allowed to supplant any current federal expenditures for border enforcement—including customs inspections.

#### SUMMARY

In closing, I cannot overstate the burden illegal immigration places on San Diego County. We strongly urge the federal government to do the following:

- (1) Fully compensate San Diego County for its costs of providing mandated services to illegal aliens.
- (2) Fully compensate San Diego County for its costs of apprehending, detaining, and adjudicating criminal illegal aliens.
- (3) Deny illegal aliens eligibility for health, educational, and social services.
- (4) Assure that only persons lawfully entitled to work in the United States actually do.
- (5) Substantially increase resources provided to the Immigration and Naturalization Service and the Border Patrol to control illegal immigration on the border.

The County of San Diego appreciates the opportunity for providing input to your subcommittee. We are encouraged by the renewed interest your subcommittee has shown in controlling illegal immigration. Please contact me if you or your staff need further information.









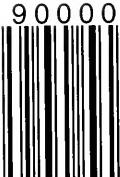
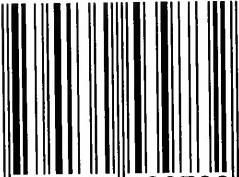
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